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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Application of the technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal mortality and morbidity

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

Taking into consideration information received from Member States, United Nations agencies, civil society groups and other relevant stakeholders, the present report discusses initiatives to implement the technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce preventable maternal mortality and morbidity. The report documents efforts in a variety of areas, including dissemination and utilization of the technical guidance. It also examines challenges in the implementation of the guidance and offers recommendations to support further implementation.

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I. Introduction

1. The technical guidance on the application of a human rights-based approach to the implementation of policies and programmes for the reduction of preventable maternal mortality and morbidity (A/HRC/21/22), hereinafter referred to as the "technical guidance", was requested by the Human Rights Council in its resolution 18/2 and was presented to the Council at its twenty-first session, in September 2012. In its resolution 21/6, the Council welcomed the technical guidance and called upon "all relevant actors, including Governments, regional organizations, relevant United Nations agencies, national human rights institutions, and civil society organizations to disseminate the technical guidance and apply it, as appropriate, when designing, implementing and reviewing policies and evaluating programmes to reduce preventable maternal mortality and morbidity". Also in resolution 21/6, the Office of the United Nations High Commissioner for Human Rights (OHCHR) was requested to prepare "a report on how the technical guidance has been applied by States and other relevant actors". The present report is submitted in accordance with that request.

2. The present report provides details of various activities and initiatives related to the implementation of the technical guidance. It also highlights barriers to implementation and recommendations for future actions. The report is based on submissions that were shared with OHCHR in response to a note verbale circulated on 28 January 2014,[1] as well as on information obtained from relevant stakeholders via reports and correspondence. The report is not an exhaustive list of all activities relating to the technical guidance or rights-based approaches to maternal health. Rather, it provides illustrative examples of how the technical guidance has been utilized in a variety of contexts.

3. The technical guidance was the third in a series of reports to the Human Rights Council on the issue of maternal mortality and morbidity.[2] It aims to assist States and other stakeholders in moving from theory to practice in operationalizing human rights in the area of maternal health, including sexual and reproductive health. As such, it presents concrete guidance, organized according to the policy cycle of planning, budgeting, implementation, monitoring, review and remedies, and international cooperation.

4. A human rights-based approach is premised on creating environments that enable rights holders to claim their entitlements and duty bearers to meet their legally binding human rights obligations. It represents a shift away from passive delivery of services to a culture of accountability for internationally guaranteed human rights. Understanding maternal mortality and morbidity as a matter of human rights requires recognition that the death and grievous injuries sustained by women during pregnancy and childbirth are not inevitable events but rather a direct result of discriminatory laws and practices, failures to establish and maintain functioning health systems and services, and a lack of accountability.

5. The notion that maternal mortality and morbidity is a human rights concern has gained considerable traction in recent years. Civil society and other experts have analysed maternal health, and wider sexual and reproductive health issues, through a human rights

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[1] Submissions were received from Argentina, Colombia, Cuba, Estonia, Germany, Guatemala, Lebanon, Mexico, the Republic of Moldova, Serbia, Slovakia and Switzerland, and from the United Nations Population Fund (UNFPA), Center for Reproductive Rights, Grupo de Información en Reproducción Elegida (GIRE Mexico), International Budget Partnership, International Initiative on Maternal Mortality and Human Rights, and Ipas.

[2] The first two reports were A/HRC/14/39 and A/HRC/18/27.

lens for many years. In 2006, this issue was placed on the human rights agenda of the United Nations, when the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health devoted part of his report to the General Assembly to this topic. Subsequently, the Human Rights Council organized a panel discussion in 2009 on this issue, and the three reports of the High Commissioner were produced in the following years.

6. Importantly, the recognition of maternal health as a human rights concern has not been restricted to the human rights sphere. Recent years have also witnessed increased collaboration between the health and human rights communities on maternal health. The 2010 Global Strategy for Women's and Children's Health, led by the Secretary-General, which focused on acceleration towards the achievement of Millennium Development Goals 4 and 5, explicitly recognizes the human rights dimensions of maternal and child health. The work that has followed on from that Global Strategy, including through the recommendations of the Commission on Information and Accountability for Women's and Children's Health, and the work of the independent Expert Review Group on Accountability for Women's and Children's Health, has continued to emphasize that maternal health cannot be treated solely as a public health issue but must be understood as a human rights concern. Furthermore, the Partnership for Maternal, Newborn and Child Health (PMNCH) has played an important role in convening policy networks that extend across normally disparate elements of research, policy, practice and the public, thus contributing to the widening of partner networks for reproductive, maternal, newborn and child health and human rights.

7. More recently, the Commission on the Status of Women recognized that failures to protect reproductive rights were hampering efforts to achieve Millennium Development Goal 5 on maternal health (E/CN.6/2014/L.7, para. 23), and the Commission on Population and Development, in its resolution 2014/1, linked the "promotion, respect, protection and fulfilment of all human rights" to the elimination of preventable maternal mortality and morbidity (E/2014/25-E/CN.9/2014/7, para. 11).

8. In discussions around the post-2015 development agenda, there has also been an emphasis on sexual and reproductive health and rights, including the human rights dimensions of maternal mortality and morbidity. For example, the report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda paid specific attention to sexual and reproductive health, including maternal health, and remarked that "universal access to sexual and reproductive health and rights is an essential component of a healthy society".[3]

9. These developments signal that there is increased understanding of maternal mortality and morbidity as a matter of human rights. The contribution of the technical guidance, based on this recognition, is to offer assistance to relevant stakeholders on the actions required to address maternal health in line with human rights obligations, and to put in place processes for the development of policies and programmes that respect human rights principles, including participation, non-discrimination and accountability.

10. It is important to note that some Governments, United Nations agencies and civil society organizations, and other entities, were already applying rights-based approaches to maternal health before the technical guidance was adopted, and continue to implement these important projects and programmes. The High Commissioner welcomes these efforts and encourages further uptake of rights-based approaches. The technical guidance is a tool

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[3] *A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development*, p. 39.

that can assist existing efforts and can encourage a common understanding of what is required by a rights-based approach.

II. Dissemination and promotion activities

11. Since September 2012, considerable efforts have been invested to ensure wide dissemination of the technical guidance. News about the technical guidance, as well as the Council's resolution on the topic, were posted on a variety of list serves and circulated to networks of organizations working in the area of sexual and reproductive health and rights. Information about the technical guidance was also distributed via articles in journals targeting specific audiences, such as health policymakers, health service providers, and the human rights community.

12. For instance, the High Commissioner authored an article in *The Lancet*, one of the world's leading medical journals, describing the technical guidance and promoting the use of the technical guidance.[4] An article about the technical guidance, by Alicia Yamin, was published in the *International Journal of Gynaecology and Obstetrics*, which explains the content and the significance of the technical guidance.[5] The Center for Economic and Social Rights, a human rights organization that focuses especially on economic, social and cultural rights worldwide, featured the technical guidance in its October 2012 newsletter. The technical guidance was also promoted through the regular blog of the White Ribbon Alliance, an international coalition of individuals and organizations in over 100 countries promoting safe pregnancy and childbirth. PMNCH has also promoted the technical guidance among its network of over 500 members. In addition, the International Budget Partnership, a civil society organization that focuses on influencing budget policy, has engaged in efforts to circulate the technical guidance to several networks, including its own list serve, as well as to the Global Movement for Budget Transparency, Accountability and Participation, which is composed of over 100 national and international budget groups from around the globe.

13. The importance of reaching diverse audiences to share information and guidance about rights-based approaches cannot be understated. Effective implementation of rights-based approaches depends heavily on the engagement of stakeholders from diverse sectors and disciplines.

14. Sessions about the technical guidance were also held at major global conferences on maternal health. For instance, at the Global Maternal Health Conference, held in Arusha, United Republic of Tanzania, from 15 to 17 January 2013, which brought together over 700 people, the technical guidance was presented at a panel session entitled "Promoting rights-based accountability for maternal health". The panel session served as a launch event for a knowledge summary produced by PMNCH on accountability and human rights, for which the technical guidance was a key resource. At other panel sessions — on rights-based approaches and on budget monitoring tools — the technical guidance was raised during the discussions as an important tool to be aware of. At the Women Deliver conference held in in Kuala Lumpur from 28 to 30 May 2013, which brought together over 4,500 people, the technical guidance was presented at a panel session entitled "Applying a human rights-

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[4] Navanethem Pillay, "Maternal mortality and morbidity: a human rights imperative", *The Lancet*, vol. 381, issue 9873 (April 2013), pp. 1159 and 1160.

[5] Alicia Yamin, "Applying human rights to maternal health: UN technical guidance on rights-based approaches", *International Journal of Gynaecology and Obstetrics*, vol. 121, issue 2 (May 2013), pp. 190–193.

based approach to maternal mortality and morbidity"; and the panellists shared experiences about how the technical guidance could be used in their work.

15. At the regional level, the Asia-Pacific regional office of UNFPA prepared a series of thematic briefs in preparation for the sixth Asian and Pacific Population Conference, held in September 2013. Two of the briefs — on the human rights elements of the International Conference on Population and Development (ICPD) and on maternal health — made specific reference to the technical guidance; they were circulated among all delegates and observers at the sixth Asian and Pacific Population Conference. The Conference recognized "the critical role of policymakers, parliamentarians, community leaders and media in fostering an enabling environment for the full and equal enjoyment of human rights, including sexual and reproductive health and rights" (E/ESCAP/APPC(6)/3).

16. Another initiative in Asia is the work of the Asia Pacific Alliance for Sexual and Reproductive Health and Rights. This organization presented the technical guidance at the Regional Workshop on the Promotion of Maternal Health and Reduction of Maternal Mortality, organized by the ASEAN Intergovernmental Commission on Human Rights and held on 27 and 28 March 2014 in Manila. The workshop's outcome document, the "ASEAN Intergovernmental Commission on Human Rights action plan to promote maternal health and reproductive rights", reaffirms the human rights of women, and references the technical guidance, among other human rights instruments.

17. Going beyond simple dissemination, certain organizations took proactive steps to raise awareness about the technical guidance, organizing webinars to enhance understanding of the content of the technical guidance. For instance, in February 2013, UNFPA held a webinar in which 36 of their field presences participated, with several offices committing themselves to pursuing implementation of the guidance at the national level. Ipas, an organization working on four continents to end unsafe abortion, organized a webinar for its staff to increase awareness and promote utilization of the technical guidance.

18. Specific efforts were also made to enhance understanding of the technical guidance among experts. For instance, in its first report, the independent Expert Review Group on Accountability for Women's and Children's Health recognized that robust implementation of the technical guidance would be an important tool for reaching Millennium Development Goal 5, on maternal health,[6] and acknowledged the important interface between the health and human rights communities. As a result, OHCHR and the World Health Organization (WHO) organized a briefing for these treaty body experts and independent Expert Review Group on Accountability for Women's and Children's Health experts, during which the main elements of the technical guidance were presented. The subsequent report of the independent Expert Review Group on Accountability for Women's and Children's Health again referred to the technical guidance as an important practical tool.[7] Another example is the Permanent Forum on Indigenous Issues, which held an expert group meeting in January 2014 on sexual health and reproductive rights, where the technical guidance was used as a resource. The report of that meeting builds on the guidance, particularly with regard to ensuring that sexual and reproductive health services for indigenous women and girls are available, accessible, acceptable and of good quality.

19. The technical guidance was also presented at the eleventh International Conference of National Human Rights Institutions, held in Amman from 4 to 7 November 2012, where

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[6] Independent Expert Review Group on Accountability for Women's and Children's Health, *Every Woman, Every Child: From Commitments to Action* (2012), p. 45.

[7] Independent Expert Review Group on Accountability for Women's and Children's Health, *Every Woman, Every Child: Strengthening Equity and Dignity through Health* (2013), p. 57.

the main theme was the human rights of women and girls. The Amman Declaration and Programme of Action that came out of the conference contain explicit recommendations to national human rights institutions on the protection and promotion of reproductive rights, including rights related to maternal health. OHCHR has received information since then that certain national human rights institutions are working with the technical guidance. In Mexico, the Human Rights Commission of Mexico City, in its 2013 annual report concerning maternal health and obstetric violence, refers to the technical guidance, among other international human rights instruments protecting maternal health and other relevant human rights. In India, an article on the technical guidance appeared in the *Journal of the National Human Rights Commission* in 2013.[8]

20. In addition, numerous stakeholders have reported to OHCHR that the technical guidance has been disseminated at the national level. In Switzerland, for example, the technical guidance was distributed through the organization Santé Sexuelle Suisse, which is the main organization in the country working on the promotion of sexual and reproductive health and respect for sexual rights. The Government of the Republic of Moldova reported that the technical guidance had been presented to relevant experts in the Ministry of Health, and that the guidance was the subject of regular discussion among national experts in the field of reproductive health. In Mexico, 32 women's institutions at the State level disseminated the technical guidance to the health sector in their respective States and also to the municipal women's institutes. Furthermore, the technical guidance was presented and circulated at a national-level meeting held by the Committee for Safe Motherhood in Mexico City in September 2013 to raise awareness about safe pregnancy as a human right that entails obligations across various sectors. The Burundi office of UNFPA reported that it had disseminated the technical guidance to a network of journalists, in order to raise awareness among the media about the applicability of rights-based approaches.

21. The technical guidance has also informed discussions around the ICPD beyond 2014 review process. In July 2013, an international conference on human rights was held in the context of the ICPD beyond 2014 review process, in order to identify positive human rights developments over the past 20 years, remaining gaps and challenges, and emerging issues and priorities for the future. The issue of accountability, as explained in the technical guidance, was an important discussion point at the conference. This understanding of accountability requires attention to all phases of the policy cycle, and to ensuring transparency and effective participation. The report of the operational review of the implementation of the programme of action of the ICPD and its follow-up beyond 2014[9] is explicitly oriented around the obligation to realize human rights, and it supports the application of rights-based approaches, including in regard to the question of maternal mortality and morbidity. In connection with the Human Rights Council's resolutions on maternal mortality and morbidity, he explains that the ICPD beyond 2014 review process affords an opportunity to reflect the expansion and strengthening of a human rights-based approach to health.

22. Knowledge about the technical guidance has also been spread more widely, thanks to its citation in a number of articles and publications.[10]

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[8] Jashodhara Dasgupta, "Maternal health: promotion and protection of human rights of women", *Journal of the National Human Rights Commission, India*, vol. 12 (2013).

[9] Launched by the Secretary-General of the United Nations and the Executive Director of UNFPA on 12 February 2014.

[10] See, for example, African Union policy brief, "Using human rights to advance accountability for women and children's health", August 2013. Available from http://www.who.int/pmnch/media/events/2013/au_policy_brief_human_rights.pdf;

III. Utilization of the technical guidance

23. Information gathered via OHCHR's existing work, via the submissions for the present report and via interviews with key stakeholders working with the technical guidance reveal that the technical guidance is being used in various ways — all directed towards the ultimate end of ensuring women's human rights, especially sexual and reproductive health and rights.

A. Assessing and influencing legislation, policies, strategies and programmes

24. Several stakeholders report using the technical guidance as an assessment or monitoring tool to examine existing policies. For instance, the submission from the Government of Mexico included a detailed table comparing the provisions of the technical guidance to existing policy provisions, in order to assess compliance. The submission from Guatemala also included details about how certain aspects of its action plan to reduce maternal and child mortality are aligned with the principles of the technical guidance.

25. The Committee for the Promotion of Safe Motherhood, in Mexico, which is a government and civil society network, has embarked on efforts to strengthen its human rights focus, explicitly on the basis of the technical guidance. In this regard, the Committee is monitoring national programmes such as the Health Sector Programme, the National Programme for Equal Opportunity and Non-Discrimination against Women, the Education Sector Programme and the Specific Action Programme on Maternal and Perinatal Health, on the basis of the provisions in the technical guidance. Committees have also been formed at the State level, which have exposed various human rights concerns relating to pregnancy and childbirth.

26. The technical guidance has been used at the working level by staff of the Danish International Development Agency (DANIDA) in order to reflect upon their existing support to the health sector. It was reported that assessing existing Danish support against the provisions of the technical guidance helped to better value, and improve upon, the contribution a rights-based approach to providing pooled funds to the sector. In particular, the technical guidance highlighted to the staff of the Agency the importance of supporting sector- and system-wide improvements as a core human rights obligation. This required attention to improved planning, budgeting and reporting processes; ensuring more equitable

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World Health Organization, *Ensuring Human Rights in the Provision of Contraceptive Information and Services: Guidance and Recommendations* (2014);
World Health Organization and Partnership for Maternal, Newborn and Child Health, *A Policy Guide for Implementing Essential Interventions for Reproductive, Maternal, Newborn and Child Health* (2014);
Partnership for Maternal, Newborn and Child Health, Knowledge summary #23: human rights and accountability (2013); and Knowledge summary #27: death reviews: maternal, perinatal and child (2013);
Rebecca Cook, "Human rights and maternal health: exploring the effectiveness of the Alyne decision", *Journal of Law, Medicine and Ethics*, vol. 41, issue 1 (April 2013), pp. 103–123;
Louise Finer and Johanna Fine, "Abortion law around the world: progress and pushback", *American Journal of Public Health*, vol. 103, issue 4 (April 2013), pp. 585–589;
Paul Hunt and Tony Gray, eds., *Maternal Mortality, Human Rights and Accountability* (Routledge, 2013), pp. 150–155;
Alicia Yamin, "From ideals to tools: applying human rights to maternal health". *PLOS Medicine*, vol. 10, No. 11 (2013).

service delivery; and strengthened accountability and transparency mechanisms. Discussions around the technical guidance contributed to a broadened understanding of rights-based approaches, by challenging the notion that human rights exist only in respect of discrete issues or population groups.

27. UNFPA has reported using the technical guidance to inform its advice on legal and policy development at both the national and regional levels. Regionally, UNFPA supports a programme entitled Intercultural Reproductive Health for Indigenous Women, in the Plurinational State of Bolivia, Ecuador, Guatemala, Honduras and Peru. This programme, which is aligned with the technical guidance, has brought about a better understanding of the human rights requirement of acceptable health services for indigenous women. Building on this project, a set of basic standards for intercultural maternal health services is being developed by the health ministries of the Plurinational State of Bolivia, Ecuador and Peru, the Andean Commission of Intercultural Health, and the South American Network of Indigenous Women. UNFPA in Malawi has reported that the technical guidance informed its analysis of several gender and youth sector policies, budgets and programmes, through its Gender Equality and Women Empowerment Programme, in order to ensure gender responsiveness and to ensure that such programmes meet human rights standards.

28. Civil society organizations have pointed out how the technical guidance can be used to monitor State policies and programmes relating to sexual and reproductive health. In Nigeria, the Centre for Reproductive Rights and the Women Advocates Research and Documentation Centre have reported using the technical guidance in order to assess practices in Nigeria relating to pregnancy and childbirth and have presented recommendations to the Government on how to address human rights concerns in this regard.

29. In East Africa, the Open Society Institute has used the technical guidance to design tools to assess how maternal health services are being implemented and to review whether laws, policies and practices incorporate human rights-based approaches. These tools have been used to review the strategic plans of four countries — Kenya, South Sudan, Uganda and the United Republic of Tanzania — and the outcome of this assessment will be shared with relevant stakeholders in the region to assist them in advocating for more robust adoption of human rights-based approaches. Linked to this initiative, in February 2014, in Uganda, the Center for Health, Human Rights and Development, in collaboration with the FXB Center for Health and Human Rights at the Harvard School of Public Health, organized a regional meeting for civil society organizations from East Africa. The meeting focused on the value of human rights-based approaches to maternal health and the implementation of the technical guidance. The participants identified areas of work necessary for implementing the technical guidance at the community level, and each country identified a community-based organization that will follow up on such implementation.

30. Similarly, Ipas Brazil reported that the technical guidance had provided a useful human rights framework for an assessment mission, sponsored by a network of civil society organizations and social movements, on the status and the availability of emergency obstetric care services and women's access to good-quality care at public health services in underprivileged municipalities of Rio de Janeiro. The findings had been presented at a public hearing of the Brazilian Senate. Civil society organizations are also exploring ways to use the technical guidance in efforts to monitor the Government's implementation of, and to work with the Government in connection with, the decision of the Committee on the Elimination of Discrimination against Women in the case of Alyne da Silva Pimentel Teixeira, the first international human rights case where a maternal death was found to be a human rights violation.

31. The technical guidance has also been used in engagement with the courts. For example, Uganda's Center for Health, Human Rights and Development has reported that the technical guidance influenced the preparation of the petition that it and other partners filed in the Constitutional Court. The petition seeks to establish that the non-provision of essential maternal health commodities in a government health facility, leading to the death of some expectant mothers, is an infringement on the right to health. The Centre explained that the emphasis placed by the technical guidance on accountability and judicial remedies provided a supportive framework for this work. It also explained that the filing of this case had led to the filing of other health-related cases, which were assisted by the technical guidance.[11]

32. SAHAYOG, an Indian civil society organization working in the areas of maternal health, sexual and reproductive health and rights, and gender equality, used the technical guidance in its joint work with the national human rights institution on monitoring the Government's commitments following the second universal periodic review of India. The actions identified include ensuring access to contraceptive services, maternal health services and safe abortion services; simplifying the grievance mechanisms; and ensuring community participation in the governance of the public health system. Many of these actions require engagement with parliamentarians, which is SAHAYOG's next step, after the May 2014 elections.

33. The technical guidance also informed the development, by the Pan American Health Organization (PAHO), of model legislation on maternal health from a human rights perspective. This model legislation is presented in a publication by PAHO entitled *Reproductive Health and Healthy Motherhood: Aligning National Legislation with International Human Rights Law*. The publication is the product of two regional meetings for parliamentarians organized by PAHO. The first meeting took place in March 2013 in Santo Domingo and the second took place in December 2013 in Brasilia. For the second meeting, PAHO financed the translation of the technical guidance into Portuguese and the technical guidance was presented. Model legislation provides important illustrations and examples of how legislation may meet human rights standards.

B. Capacity-building

34. Various interlocutors have reported using the technical guidance as a way to enhance understanding of the actions required under a rights-based approach, particularly through capacity-building initiatives. For instance, Colombia reported that the technical guidance has contributed to a better understanding of the requirements of a rights-based approach, which has been particularly relevant in Colombia since the Constitutional Court decision of 2006 regarding the grounds on which abortion should be permitted.[12]

35. UNFPA in Brazil has reported that the technical guidance has been used in training activities, especially with regard to a workshop on the intersectionalities of race, gender and age in public policies and budgets, which focused on the health of women of African descent. The workshop reportedly provided a basis for constructive engagement between government officials, civil society, academia and United Nations agencies, and led to action that was effective in framing maternal health as a human rights issue.

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[11] See, for example, *CEHURD and others* v. *Nakaseke District Local Government* (civil suit No. 111 of 2012) and *CEHURD* v. *Executive Director of Mulago National Referral Hospital* (civil suit No. 212 of 2013).

[12] Decision C-355/06 (10 May 2006).

36. OHCHR has used the example of maternal mortality in its staff training on human rights budgeting, using the technical guidance as a tool. Bringing together about 30 OHCHR staff members, the training included a session that examined the budget chapter of the technical guidance and considered the application of these principles in the national context.

37. The International Federation of Gynaecology and Obstetrics considers the adoption of a human rights-based approach to be very important in improving women's health and has reported that the technical guidance has been a useful tool for its work in this area. In particular, the technical guidance has provided input into the work of its Committee for Women's Sexual and Reproductive Rights, which has developed a curriculum on women's rights to reproductive and sexual health. The curriculum will be introduced at the executive board meeting being held in Tokyo in July 2014, and will also feature at other upcoming Federation conferences at the national, regional and international levels. The Federation is also examining the possibility of introducing the curriculum in medical schools. The aim of the curriculum is to raise awareness among gynaecologists and obstetricians around the world of the importance of women's human right to health. The curriculum highlights case studies where women's rights have been jeopardized. It addresses the questions of access to facilities and services, the treatment of health-care providers, and quality of care, among many other aspects.

38. In South Africa, the Equinet network, together with the Society of Midwives of South Africa, is working to build the capacity of midwives to apply rights-based approaches, focusing strategically on educators. In KwaZulu Natal province, a task team has been established to examine the midwifery curriculum and integrate a human rights-based approach, drawing on the technical guidance. Discussions are also under way with midwifery colleges in Eastern Cape, Western Cape and Free State, as well as at the national level, to expand these efforts to incorporate a rights-based approach into the curriculum.

39. Uganda's Center for Health, Human Rights and Development has reported that the technical guidance has been a useful tool in the development of an action research project on community participation in the realization of the right to health, which was implemented in partnership with the Learning Network for Health and Human Rights at the School of Public Health and Family Medicine of the University of Cape Town, South Africa. The project explores the experiences of community members in the Kiboga and Kyankwanzi districts of Uganda with regard to the health unit management committees — the institutional structures established by the Government for community members to participate in health governance.

40. In Peru, CARE Peru is working together with PAHO to engage national health authorities and policymakers on dissemination and capacity-building with regard to the implementation of the technical guidance. In that connection, CARE Peru is producing a publication entitled *Methodology for Training Citizens for Local Citizen Monitoring: Legislative and National Norms Framework to Promote Citizen Monitoring for Health Rights.*

41. At the Harvard University School of Public Health, the technical guidance was studied in a course entitled "The right to health in resource-poor settings: maternal health in Tanzania". The course examined the implications of adopting a rights-based approach to maternal health for multiple actors across the policymaking, implementation and review cycle, as well as with respect to enforcement mechanisms and international assistance and cooperation. The students undertook interviews with a wide range of stakeholders, such as government officials, donors, representatives both of United Nations agencies and of civil society organizations, and patients, and visited facilities, in order to explore the obstacles to, and the implications of, implementing rights-based approaches.

C. Planning, programming and strategic vision

42. The commitment to implementation of the technical guidance specifically, and to a rights-based approach to sexual and reproductive health, including maternal health, is also evident in the way in which some stakeholders have effectively included rights-based approaches in their planning and strategy processes. In line with the strategic plans of both UNFPA and OHCHR, a Framework of Cooperation was signed on 3 March 2014 by both organizations which provides a framework for further implementation of the technical guidance. In particular, as the technical guidance is aimed at action at the country level, this framework commits both organizations to advancing the integration of human rights standards and principles into national policies, programmes and budgets relating to sexual and reproductive health and rights, including in the areas of maternal health and family planning. It also has the objective of supporting development of the capacity of national human rights institutions and civil society organizations to monitor sexual and reproductive health and rights obligations, including those related to maternal health, and to follow up on the relevant recommendations of international human rights mechanisms.

43. PMNCH has reported that its involvement in the process leading to the adoption of the technical guidance has assisted it in strengthening partnerships, including with OHCHR, to implement rights-based approaches. Furthermore, involvement in the technical guidance process has contributed to the strengthening of PMNCH's conceptual approach to integrating human rights into its work. Human rights is now a major feature of the work of PMNCH on promoting accountability for reproductive, maternal, newborn and child health, which focuses on enhancing linkages and alignment between accountability mechanisms for human rights and for health, and developing and disseminating tools for human rights-related advocacy. PMNCH has also reported that integrating human rights into its work has had an impact in several ways, including the way in which data are collected and indicators are identified, and the way in which concepts are defined. Other impacts include bringing new perspectives, evidence and solutions to challenges and identifying new areas where further research is required.

44. The technical guidance has also been used to inform national planning processes. For example, UNFPA in Bhutan (a One UN country) reported that the technical guidance had contributed directly to the formulation of the country's United Nations Development Assistance Framework (UNDAF). Specifically, the technical guidance was useful for the Essential Social Services cluster, which has outcomes and outputs that relate to maternal health services. The integrated analytical framework, which encompassed concepts of equity, a human rights-based approach, gender, capacity development and results-based management, was used to ensure a more rigorous and systematic analysis across all cross-cutting areas when formulating areas of intervention, outcomes or outputs. Moreover, a human rights-based approach guided the formulation of interventions for maternal health, especially to address the disparity in access to reproductive health services and commodities, including for adolescents.

45. UNFPA in Uganda used the technical guidance directly at a planning meeting for 11 districts that had been chosen for fast-tracking of maternal and newborn health in the UNDAF for 2014–2015. The first day of the meeting included an orientation session on the principles behind a human rights-based approach, as well as a dedicated session on the technical guidance. The added value of using the technical guidance was the acknowledgement by the participants that more than 88 per cent of maternal deaths are preventable and that actions need to be taken at all levels of the continuum of care, from the household and community level to the health facility level to the national and international level, and across all the other sectors beyond the health-care sector. The obligations of the Government were emphasized, even when health services provision is decentralized. The need to strengthen accountability mechanisms was also discussed, and some districts intend

to support by-laws to engage men in maternal health issues. The districts came up with their own action plans, and some innovations, such as pregnancy mapping and door-to-door mobilization, as well as follow-up. Furthermore, the technical guidance is explicitly mentioned in the Consolidated District Priority Interventions for Maternal and Newborn Health 2014–2015.

46. The technical guidance has also contributed to the strategic planning carried out by donors. Staff at the Danish International Development Agency pointed out that the technical guidance was helping in the formulation of the next cycle of support (for 2015 to 2020) for the health sector in one of the African countries where the Agency is active. For example, the standards of availability, accessibility, acceptability and quality that are highlighted in the technical guidance, as well as in other human rights instruments, helped the Agency to consider how its support could contribute to reducing discrimination and strengthening broader accessibility to facilities, goods and services.

D. Convening multi-stakeholder processes

47. As a result of the collaboration between organizations in developing the technical guidance, OHCHR, PMNCH, WHO and UNFPA are working together to strengthen the application of rights-based approaches to maternal, newborn and child health, including to related sexual and reproductive health issues. As part of this joint work, a regional workshop was held in Lilongwe from 18 to 20 November 2013, bringing together representatives of governments, national human rights institutions, United Nations country teams and civil society, from four countries, namely Malawi, South Africa, Uganda and the United Republic of Tanzania. The aim of the workshop was to build the capacity of participants to assess their legal and policy environment, in order to integrate human rights into laws, policies and programmes relating to maternal, sexual and reproductive health, and newborn and child health, and to understand the implications for States in the areas of planning, budgeting, implementation, monitoring, review and remedies.

48. At the workshop, participants worked in country groups to identify specific action points to follow up on in their countries; these were considered strategic opportunities for applying rights-based approaches in the areas of maternal and child health. The action points included efforts to integrate human rights into revisions of existing policies relating to sexual and reproductive health, efforts to bring human rights analysis into the UNDAF process, and providing human rights expertise to law reform processes. Following on from this workshop, efforts are under way to produce situational assessments on human rights and maternal and child health, including sexual and reproductive health, which can be used as inputs into national planning and programming processes through multi-stakeholder initiatives.

49. In Mexico, OHCHR is involved in efforts to implement the technical guidance, in close collaboration with the Committee for the Promotion of Safe Motherhood; these are focused on the States of Jalisco and Oaxaca. In May 2014, a range of stakeholders gathered, including from the Government, the legislature, human rights institutions, civil society organizations and academia, to raise awareness about the technical guidance, with a view to developing an implementation plan. The guidance was presented to the authorities and, as a result, in Jalisco, an agreement has been reached to establish an intersectoral committee.

E. Development of tools

50. Since the adoption of the technical guidance in September 2012, numerous stakeholders have pointed out the need for more detailed guidance. In response to these

requests, several initiatives are under way. OHCHR, with support from PMNCH, WHO and UNFPA, is developing modular guidance on the application of a rights-based approach to maternal and child health. It is recognized that a diversity of actors needs to be involved. The modules are aimed at different stakeholder groups, and aim to provide key questions for reflection on the role that different stakeholders play in putting a rights-based approach into practice. After the technical guidance has been presented to different stakeholder groups, a common question that arises is "what do I need to do?" — as a health policymaker, a national human rights institution, a parliamentarian, a donor country, a representative of the media, and so on. The first two modules are in the process of being finalized; they focus on the role of health policymakers and of national human rights institutions. Further modules are expected to be produced in 2014, focusing on other stakeholder groups.

51. UNFPA and OHCHR, together with the Danish Institute for Human Rights, have produced a handbook on reproductive rights for national human rights institutions, which provides extensive guidance on applying rights-based approaches and on human rights standards in the area of sexual and reproductive health and rights, including those related to maternal health. Additionally, UNFPA has developed a guidance note to support national human rights institutions in conducting national inquiries and country assessments on sexual and reproductive health and rights, which is based on the methodological framework for situational analysis and assessment of States' obligations that is provided in the technical guidance.

52. PMNCH is working to develop a reproductive, maternal, newborn, child health and multisectoral processes policy assessment tool, which will build on the policy compendium that it launched in 2014, informed by the technical guidance.

53. In March 2014, WHO launched guidance and recommendations on ensuring human rights in the provision of contraceptive information and services. The technical guidance on maternal mortality contributed to that guidance on contraception, particularly in terms of describing what is required in order to ensure participation and accountability. WHO and UNFPA are following up on this work by developing an implementation guide on contraceptive services that is targeted at service providers and policymakers.

54. Civil society organizations are also planning to develop training tools based on the technical guidance. For example, the Asia Pacific Alliance for Sexual and Reproductive Health and Rights is developing an advocacy tool based on the technical guidance to make the guidance more accessible for civil society currently working on sexual and reproductive health and rights and maternal health in the South-East Asia region. In addition, it is planning to conduct a training for civil society organizations to equip them with the necessary information to advocate with governments in the region. One of the objectives of the training will be to serve as a bridge between groups in the region working on sexual and reproductive health and rights, and groups working on maternal health, which often work in silos.

55. An accessible version of the guidance for decision makers has been developed in Mexico by the Committee for the Promotion of Safe Motherhood, Ipas, the Instituto de Liderazgo Simone de Beauvoir, International Initiative on Maternal Mortality and Human Rights, OHCHR, the MacArthur Foundation and the Norwegian Agency for Development Cooperation. The objective of this tool is to guide policymakers working in different sectors on how to integrate a human rights-based approach into the design, implementation and evaluation of programmes and strategies, as well as in accountability mechanisms. This simplified version of the technical guidance outlines the necessary steps for incorporating human rights approaches into maternal health.

56. The technical guidance has also influenced the development of the *Human Rights and Gender Mainstreaming Manual for Health Professionals*, produced by the Ministry of Health of Uganda with the technical support of the Center for Health, Human Rights and Development. The manual seeks to integrate a human rights-based approach into policies, programmes and services.

57. Another signal of the positive reception for the technical guidance has been the request by the Human Rights Council for the development of technical guidance on applying a human rights-based approach to the implementation of policies and programmes to reduce and eliminate preventable mortality and morbidity in children under 5 years of age, which envisions a process similar to that carried out with the maternal mortality technical guidance. There are well-recognized links between maternal mortality and child mortality, and considerable efforts have been invested to ensure that the two technical guidances are complementary and harmonious.

IV. Challenges for the implementation of the technical guidance

58. The diversity of stakeholders engaging with the technical guidance, as well as the wide variety of contexts in which the technical guidance is being utilized, is encouraging. In order to promote further implementation of the guidance, and rights-based approaches more broadly, several challenges can be noted for further work.

A. Time required

59. Implementing a rights-based approach is a long-term process, for several reasons. In many contexts, applying a rights-based approach is a new way of operating, and shifting working methods and mentalities requires time. By its nature, a rights-based approach requires extensive consultation, which is also a lengthy endeavour. Specifically, it must be borne in mind that planning cycles at the national and international levels vary from anywhere between 4 and 10 years, which means that the strategic moments for integrating a rights-based approach are not always imminent. However, in the meantime, much capacity-building work may be undertaken. In addition to the time required to put rights-based policies and programmes in place, it will take many more years for the health outcomes of such policies to be properly measured and understood.

60. The technical guidance was presented to the Council in September 2012, and the present report was finalized in June 2014, leaving less than two years to examine how the technical guidance is being implemented. At this early stage, many promising initiatives have been started, but assessing the implementation of the guidance would only be possible with more time.

B. Dissemination

61. Many stakeholders reported that the technical guidance has not been widely disseminated and thus is not widely known. Ensuring that documents agreed at the international level reach the policymakers and other stakeholders who are concerned is a larger issue, which many could have a role in addressing. As detailed above, considerable efforts have been deployed to ensure broad dissemination of the technical guidance, but more are required if the technical guidance is to be more widely utilized. Governments play an important role in sharing information among ministries and other national and subnational authorities to ensure that there is coherence between international-level commitments and national-level action. The United Nations can also help to ensure

effective dissemination of information about rights-based approaches, including the technical guidance on maternal mortality and morbidity. The submission of UNFPA, which details plans to roll out the technical guidance, is a promising step in the right direction.

62. As further dissemination is pursued, there is also a need to put the technical guidance into more accessible language in order for it to be useful to the wide diversity of stakeholders involved in applying rights-based approaches. Such an effort would assist in strengthening the cross-sectoral and multi-disciplinary work that is required for applying a rights-based approach, as further elaborated below.

C. Multi-stakeholder processes and coordination

63. Applying a rights-based approach inherently involves multi-stakeholder processes. In many areas of development, including the health sector, work has taken place in a fragmented manner, with too little attention to the importance of ensuring cross-sectoral and cross-disciplinary linkages. A rights-based approach is a holistic approach which hinges on this cross-sectoral and cross-disciplinary cooperation. However, one challenge reported is the collision between efforts to ensure the comprehensive approach required by human rights and the current reality in many places where there are vertical approaches that separate different areas of sexual and reproductive health (e.g. contraceptive services are often funded separately from maternal and child health, or funding is received for certain pathologies such as HIV/AIDS but not for wider health concerns).

64. Coordination among the various stakeholders is essential at the earliest stages of planning and implementation. It is essential that applying human rights-based approaches does not lead to parallel processes, but effectively impacts the way that existing policies are designed, implemented and evaluated. Effectively triggering and supporting a multi-stakeholder process requires political will, and frequently a champion who is personally committed to the aims of the process.

D. Advocacy and capacity development

65. Enhancing understanding of rights-based approaches as applied to maternal health requires further capacity-building on how to put a rights-based approach into practice. In many places, there are positive, human rights-based policies, but in order to implement these policies, there is a need for increased understanding that human rights is not business as usual, but a process of empowerment and claiming entitlements. Ensuring this knowledge and capacity among a critical mass of decision makers, practitioners and advocates helps to effect the shift from human rights theory to building a culture of rights and accountability. Some efforts are under way to develop this further guidance, but more support is needed in order to ensure that such guidance is accessible and practical for those who would use it.

66. For those who are advocating for the implementation of rights-based approaches, more support is needed to bolster evidence and justifications for this approach. The human rights-based approach is grounded in the human rights obligations that all States have signed up to. In addition to this legal obligation, there are powerful health, economic and social justifications for implementing rights-based approaches, which can be persuasive in discussions with relevant stakeholders. Ensuring that these health, economic and social benefits are documented and are widely available to advocates is key to ensuring the further spread of rights-based approaches.

67. The challenge of capacity-building also relates to the need to enable rights holders to claim their rights. In many contexts, individuals are unaware of their rights and

entitlements, and thus do not demand their rights. Rights are more likely to be respected, protected and fulfilled where there is a culture of accountability, which depends greatly on civic engagement and awareness of rights. More work is required in order to ensure that all people are knowledgeable about their human rights and how to claim them.

V. Recommendations

68. **The High Commissioner observes that further time is needed in order to assess the impact of the utilization of the technical guidance and to understand how efforts to apply rights-based approaches to maternal health can be more robustly supported. In this regard, the High Commissioner recommends that the Council remain seized of this important issue and continue to receive information on the implementation of the technical guidance, in order to advance understanding about the operationalization of human rights.**

69. **The following recommendations are offered to States and other stakeholders, as relevant:**

(a) Disseminate the technical guidance widely, including by ensuring its distribution to relevant ministries and other organizations working in the area of sexual and reproductive health and rights. In addition, stakeholders should explore additional modalities for making the technical guidance available in more accessible formats.

(b) Organize briefing sessions, webinars, or other meetings, to discuss how the technical guidance can be used at the national level and to enhance understanding of rights-based approaches.

(c) Identify opportunities for implementing the technical guidance, and support its implementation, in national-level processes, including law reform, sector policy reviews, UNDAFs, monitoring and evaluation processes, and accountability processes.

(d) Convene and support multi-stakeholder groups to discuss the application of a rights-based approach to maternal health and sexual and reproductive health more broadly, and prioritize areas for action.

(e) Ensure coordination of multi-sectoral and cross-disciplinary processes in order to achieve a comprehensive approach to sexual and reproductive health and rights, including maternal health, as required by a human rights-based approach.

(f) Engage in capacity-building for different stakeholders (including policymakers, legislators, national human rights institutions, United Nations agencies, and service providers, among others) in order to support efforts to apply rights-based approaches to sexual and reproductive health.

(g) Support efforts to convey the technical guidance in formats that are more accessible to a wide variety of stakeholder groups.

(h) Engage in capacity-building for rights holders to enable them to claim their rights and contribute to a culture of accountability for delivering on sexual and reproductive health and rights.

(i) Where programmes and other initiatives already apply a rights-based approach to maternal health, consider using the technical guidance as an assessment tool to evaluate the comprehensiveness of such approaches.

(j) Document challenges in implementing rights-based approaches, in order for future guidance and advice to effectively respond to such challenges.

(k) Place human rights, including sexual and reproductive health and rights, at the centre of the post-2015 development agenda, in order to ensure policy coherence with human rights obligations.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Analytical study focusing on gender-based and sexual violence in relation to transitional justice

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

Focusing on gender-based and sexual violence in relation to transitional justice in conflict and post-conflict situations, the present study covers the effective participation of victims and the participatory procedures necessary to address the different needs and opportunities of women, men, girls and boys, as well as good practices with regard to national consultations, truth-seeking, criminal justice, reparations and institutional reform. It contains illustrative examples as well as suggested opportunities for further improvements.

While there has been notable progress, more efforts are needed to ensure that transitional justice processes address the full spectrum of gender-based and sexual violence. Various bodies and institutions may gain new ideas from the approaches, sometimes novel, outlined in the present study.

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I. Introduction

1. In its resolution 21/15, the Human Rights Council requested the United Nations High Commissioner for Human Rights to submit to the Council, prior to its twenty-seventh session, an analytical study focusing on gender-based and sexual violence in relation to transitional justice in conflict and post-conflict situations, the effective participation of victims and the participatory procedures necessary to address the different needs and opportunities of women, men and children, including good practices of States in the field of truth-seeking, justice, reparation and institutional reform.

2. The Office of the United Nations High Commissioner for Human Rights (OHCHR) asked for contributions for the study. Information was provided by Algeria, Argentina, Colombia, Cuba, France, Germany, Georgia, Guatemala, Iraq, Serbia, Slovakia and Switzerland, as well as by Redress.[1] The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the Special Rapporteur on violence against women, its causes and consequences, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the Special Representative of the Secretary-General on Sexual Violence in Conflict and the Special Representative of the Secretary-General for Children and Armed Conflict were consulted in the preparation of the study.

II. Gender-based and sexual violence in relation to transitional justice

3. Gender-based violence is considered to be any harmful act directed against individuals or groups of individuals on the basis of their gender.[2] Gender-based violence may include sexual violence, domestic violence, trafficking, forced/early marriage and harmful traditional practices. Sexual violence is a form of gender-based violence and encompasses "any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting".[3] Sexual violence takes multiple forms and includes rape, sexual abuse, forced pregnancy, forced sterilization, forced abortion, forced prostitution, trafficking, sexual enslavement, forced circumcision, castration and forced nudity.

4. An understanding and analysis of how gender intersects, for instance, with race, religion, economic situation, political affiliation and geography is also critical to understanding and addressing patterns and forms of gender-based violence. In some contexts, it is also important to take into consideration violence perpetrated against persons perceived as not conforming to traditional notions of masculinity or femininity, including lesbian, gay, bisexual and transgender persons.

5. Although men and boys are also targets of gender-based and sexual violence in conflict situations, the victims of such violence continue to be disproportionally women and girls. Experience shows that in conflict and post-conflict situations, and in periods of

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[1] The full text of the replies is available from the secretariat.

[2] See the Guidelines for Gender-Based Violence Interventions in Humanitarian Settings, issued by the Inter-Agency Standing Committee 2005. See also the Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992).

[3] United Nations Action against Sexual Violence in Conflict, citing the World Health Organization, in "Analytical and conceptual framing of conflict-related sexual violence" (2011), p. 1.

political or civil strife and instability, women and girls are exposed to heightened risks of violations of their human rights and higher levels of violence, including sexual violence. Trafficking in women and girls can be exacerbated owing to the breakdown of political, economic and social structures, increased militarism and related demands for women's sexual, economic and military exploitation.[4] During armed conflict, sexual violence is often used as a tactic of war to humiliate, dominate, instil fear in, disperse and/or forcibly relocate civilian members of a community or ethnic group.[5] Ethnic cleansing and the destruction of the fabric of family and community are often also part of the deliberate strategies of warring parties.[6]

6. For the United Nations system, transitional justice comprises the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. Transitional justice consists of both judicial and non-judicial processes and mechanisms, including prosecution initiatives, truth-seeking, reparations programmes, institutional reform or an appropriate combination thereof.[7] Furthermore, comprehensive national consultations, particularly with those affected by human rights violations, have been recognized as critical element of transitional justice.[8]

7. Addressing gender-based and sexual violence in societies transitioning from conflict or repressive rule is vital to ensuring accountability and sustainable peace. Transitional justice processes can help to realize the rights of victims of such violence and can be instrumental in identifying and dismantling the underlying structural discrimination that enabled it to occur. As such, it is important to ensure that victims of gender-based and sexual violence are consulted effectively, that they receive adequate redress for violations, that women can fully participate in transitional justice processes and that their rights and perspectives are adequately reflected therein.

8. There has been an increased focus on the effective participation of victims in transitional justice processes, and the participatory procedures necessary to address the different needs of and opportunities for women, men, girls and boys. Security Council resolution 1325 (2000) and subsequent Council resolutions on women, peace and security, including resolution 2122 (2013), recognized the need to include women in all aspects of peacemaking, post-conflict reconstruction and peacebuilding. This includes the design, implementation and evaluation of transitional justice processes,

III. National consultations

9. National consultations are a critical element of the human rights-based approach to transitional justice, and are founded on the principle that successful strategies require meaningful public participation. Consultations around the design, implementation and evaluation of transitional justice mechanisms are key to ensuring that those mechanisms are relevant and empowering to those affected by them. Without the consultation and participation of women and girls, transitional justice initiatives are likely to reflect only men's concerns, priorities and experiences of violence and to largely overlook gender-

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[4] Committee on the Elimination of Discrimination against Women, general recommendation No. 30 (2013), para. 39.

[5] Security Council resolution 1820 (2008).

[6] UN-Women, *A Window of Opportunity: Making Transitional Justice Work for Women* (2012), p. 2.

[7] S/2004/616, para. 8.

[8] See the Guidance note of the Secretary-General on the United Nations approach to transitional justice (2010).

based and sexual violence. In Timor-Leste, it was only when women were consulted that prosecutors began to pay attention to sexual-violence crimes.[9] Similarly, consultations are necessary to create transitional justice processes that are sensitive to women's particular needs, their priorities and their social and cultural contexts. Further, national consultations can themselves be an important tool of empowerment, recognition and redress for victims. Consultations with groups that are often silenced or marginalized, such as women, children, the elderly, and ethnic, racial or religious minorities, also sends a strong signal about equal rights in the post-conflict context, which itself has transformative social potential.

10. Representation of a cross section of women and girls in all their diversity must be ensured during consultations. Consultations with women should not solely focus on their experience of victimization, but should take account of the evolution of gender roles during and after conflict and the multiple roles women play in such situations. By highlighting women's roles as vital contributors to the economy, household heads, guardians and agents of change in their communities, consultations can maximize their potential to empower women and challenge prejudices.

11. There is often a need to address the practical obstacles faced by women, men, girl and boy victims of gender-based and sexual violence in participating in consultation processes. For instance, to express free and frank opinions, women should be consulted separately from men and, as appropriate, by other women and without haste. Protections from backlash and stigmatization, including strict safeguards of confidentiality and anonymity, are essential. To avoid re-traumatizing victims, consultations must be held in safe, neutral spaces by people trained in working with victims of gender-based and sexual violence. This is particularly critical when consulting children, which should generally only be done by specially trained personnel.[10] The reluctance of victims to disclose their experiences may be compounded in countries where there is little awareness that gender-based and sexual violence is criminal, or where victims may face counter-charges of adultery or morality-related offences for bringing a sexual violence claim. Sensitization efforts giving local populations necessary information about transitional justice processes can play an important role in that regard. More efforts are also needed to understand and address the particular barriers that male, lesbian, gay, bisexual and transgender persons and other marginalized victims of sexual violence may face in coming forward in consultations.

12. Attention must also be paid to obstacles that women and girls may face in participation. Those include low literacy levels, discussions being conducted in a language different to their common vernacular or too far from their homes, the cost of attending consultations, including in lost labour and childcare time, and a lack of identity documents. Measures such as using local dialects and providing childcare assistance can help address those issues.[11] Conducting decentralized consultations, including in remote locations, is a particularly important element in supporting women's participation and in ensuring that a diversity of women are consulted. In the Democratic Republic of the Congo, for instance, OHCHR convened a high-level panel in 2011 that visited six communities around the country and met with local and provisional government authorities and with victims, non-governmental organizations and other United Nations agencies in order to ascertain victims' views on reparations.[12]

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[9] *Rule-of-Law Tools for Post-conflict States: National Consultations on Transitional Justice* (United Nations publication, Sales No. 09.XIV.2), p. 20.

[10] *National Consultations*, pp. 20–21.

[11] UN-Women, *A Window*, p. 4.

[12] See the report of the High-level Panel on Remedies and Reparations for Victims of Sexual Violence in the Democratic Republic of the Congo (2011).

13. As women and children make up the vast majority of persons displaced by conflict, efforts should also be made to consult in camps for internally displaced persons and refugees. Some initiatives in this area include the consultation of Sierra Leonean refugees in Guinea in 1999, of Timorese refugees in Indonesia in 2000,[13] and of internally displaced persons in Darfur in 2010 in relation to the Doha peace process. However, more efforts are needed.

14. Women's groups and other local networks can play an invaluable role in reaching and engaging victims. However, care must be taken in ensuring that civil society intermediaries truly represent victims' views, not their own agenda or that of a narrow subgroup of victims,[14] for example urban or well-educated women only. While consultations with children should make use of schools, clubs, child protection agencies and other networks for outreach and engagement, experience suggests that for children to speak frankly, they should be consulted in the absence of adult intermediaries.

IV. Truth-seeking processes

A. Truth commissions

15. Truth commissions play an important role in addressing not only sexual violence, but also other forms of gender violence. Truth commissions are often well placed to reflect the systematic nature of sexual violence, particularly where it is used as a method of warfare. In situations where there is social stigma attached to sexual violence, incorporating a gender perspective into the work of a truth commission will also help to break down that stigma and change societal attitudes regarding sexual violence. There may not be sufficient understanding of the long-term impact of such violence, including as suffered by girls and boys. Sensitizing the population to the work of truth commissions through an outreach programme is an important element in that regard.

16. A specific gender perspective, including attention to gender-based and sexual violence, was absent from the work of some early truth commissions.[15] Some of the more recent commissions have successfully integrated closer attention to gender-based and sexual violence in their work and supported the participation of women and girls.[16] That included creating a specialized gender unit within a commission; incorporating the issue of gender-based and sexual violence into their operational structure and rules of procedure, even where that was not specified in the formal mandate of the commission; ensuring the representation of women as commissioners, at expert levels and as staff; supporting a communication and outreach process that emphasizes that gender-based and sexual violence is within the ambit of the commission and should be reported; and conducting analysis and elaborating specific findings and recommendations regarding sexual violence or gender-based discrimination in their final reports.[17]

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[13] *National Consultations*, p. 21.

[14] Ibid., p. 22.

[15] A/HRC/24/42, para. 36. See also Vasuki Nesiah and others for the International Center for Transitional Justice, *Truth Commissions and Gender: Principles, Policies and Procedures* (2006).

[16] See *Witness to Truth: Report of the Sierra Leone Truth and Reconciliation Commission* (2004), chap. 2; *Final Report of the Truth and Reconciliation Commission of Liberia*, vol. 2, *Consolidated Final Report*; and *Chega! The Report of the Commission for Reception, Truth and Reconciliation in Timor-Leste (CAVR)*, part 7, chaps. 7.7 and 7.8, and part 11.

[17] Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd ed. (2011), p. 85.

17. The truth commissions in Guatemala, South Africa and Peru, which were pioneers in addressing gender-based and sexual violence, have been important reference points for later commissions. In Peru, for instance, the truth commission established a specific gender unit, and dedicated two chapters of its final report to gender issues, including gender-based and sexual violence.[18] Other important examples of truth commissions that addressed gender-based and sexual violence include those in Kenya, Liberia, Morocco, Sierra Leone, Solomon Islands and Timor-Leste.

18. While dedicated attention to sexual violence continues to be critically important, there is growing acknowledgement that truth commissions have a unique role to play in uncovering the root causes of such violence and the complexity of its effects. The report of the Kenyan truth commission includes a lengthy chapter on sexual violence, and another on gender and gross violations of human rights, in which the commission explored patterns of discrimination and displacement, as well as the record of women's political participation and their historical role in peacemaking.[19]

19. Incorporating issues of gender-based and sexual violence into the work of a truth commission, including research, outreach, statement taking and report writing, requires a considerable commitment in the context of a truth-seeking mandate that is already challenging.[20] This may also include consideration of the economic, social and cultural dimensions of violations that disproportionately affect women, children and other specific groups.[21] In Peru, the truth commission explored gender dimensions of the economic causes and consequences of violations, including the displacement of women and children and the rise in the number of female-headed households.

20. In Sierra Leone, the truth commission addressed violations of economic, social, cultural, civil and political rights and looked at linkages between pre-existing gender inequality and the gender-based and sexual violence that was prevalent during that country's civil war. In its report, the truth commission made broad recommendations aimed at transforming gender relations, including through law reform; improvements to women's access to justice; abolishment of discriminatory customs; education programmes; and the economic empowerment of women. Furthermore, the truth commission in Guatemala concluded that sexual violence was systematically directed at rural Mayan women during the conflict.

21. A number of factors may support a commission's capacity to undertake a gender-sensitive analysis and the likelihood that it will do so. While it is certainly possible for a commission to give sustained attention to issues of gender-based and sexual violence even without a specific mandate to that effect, there are many advantages to identifying such issues specifically in its legal framework.[22] Those drafting a legal framework for a truth commission should take into account the importance of gender-based and sexual violence in the history of the conflict. In most cases, it is recommended that this issue be identified specifically in a commission's mandate.[23] Additionally, it is important to ensure that a

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[18] *Comisión de la Verdad y Reconciliación: Informe Final*, vol. VI, chap. 1, sects. 5 and 8, and vol. VIII, chap. 2, sect. 1.

[19] *Report of the Truth, Justice and Reconciliation Commission* (Kenya, 2013), vol. II A, chap. 6, and vol. II C, chap. 1.

[20] See A/HRC/24/42.

[21] OHCHR, *Transitional Justice and Economic, Social and Cultural Rights* (United Nations publication, Sales No. E.14.XIV.3), pp. 17 and 21.

[22] UN-Women, *A Window*, p. 12.

[23] Rashida Manjoo, "The South African Truth and Reconciliation Commission–a model for gender justice?" (2004), p. 18. See also United Nations Transitional Administration in East Timor Regulation 2001/10, which required that a gender-sensitive approach be integrated into all aspects of the

commission's design and mandate are informed by national consultations, including with women's organizations, and to conduct a conflict-mapping exercise that documents the range of violations experienced by women.

22. Many recent commissions have built on the precedent established by Peru, setting up specialized gender units. Other truth commissions, such as the National Reconciliation Commission of Ghana, have incorporated gender concerns throughout its structure, rather than establish a specific unit. Gender units can play a valuable role as a focal point for efforts to address gender-based and sexual violence, but should not be a substitute for incorporating gender concerns across a commission's work. Some experts recommend both establishing a gender unit and taking a cross-cutting approach, as was done by the commission in Timor-Leste.

23. Partnerships with women's groups can strengthen a truth commission's legitimacy, as well as its capacity to address gender-based and sexual violence. Past commissions have benefited from the involvement of women's groups, which have made formal submissions, undertaken outreach, provided support to victims who provide testimony, drawn attention to overlooked issues, assisted with statement taking and gender training, and provided analysis on patterns of abuse. In Tunisia, women's organizations are working to document stories and provide preliminary lists and databases of women victims, to be used in the initial mapping undertaken by the Truth and Dignity Commission. In Timor-Leste, partnerships with women's civil society groups significantly strengthened the commission's work.[24] It is also important for a commission to reach out to organizations that work closely with child victims, including victims of sexual violence.

24. A commission's composition should reflect its priorities in the area of gender-based and sexual violence. Experience shows that appointing commissioners and staff who understand and are committed to addressing the gendered dimensions of conflict is vital to maintaining a proactive focus on gender-based and sexual violence. Some commissions have used quotas to ensure the representation of women as commissioners, at expert levels and as staff. Commissioners and staff who bring understanding and experience in dealing with this type of violence may also be better placed to create a supportive and enabling environment that allows victims to speak about their experiences. Female victims of sexual abuse may also prefer to speak with female statement takers, and male victims of such abuses may prefer to speak with men. This should be taken into account in staffing the teams of statement takers and in setting up hearings.

25. Internal training is also important. Many past truth commissions, including those in Ghana, Liberia, Sierra Leone and Timor-Leste, incorporated gender training for their staff. Training has covered, among other areas, international norms pertaining to gender-based and sexual violence; the history of gendered patterns of abuse in situations of conflict and repression; gender-sensitive approaches to statement taking, data collection and hearings, including support for and protection of women participants; conducting investigations that are responsive to the complex causes and manifestations of gender-based and sexual violence; and mainstreaming gender in report writing.[25] The United Nations has often assisted with expertise during such training.

26. Investigators and statement takers may need training in interacting sensitively with victims experiencing psychological stress. The experience of many truth commissions has

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commission.

[24] Nesiah and others, *Truth Commissions*, pp. 14–15.

[25] Binaifer Nowrojee, "Making the invisible visible: post-conflict justice for Sierra Leone's rape victims", *Harvard Human Rights Journal*, vol. 18 (2005), p. 93; Nesiah and others, *Truth Commissions*, p. 12.

been that women providing statements speak more often about the victimization of others, particularly family members,[26] and may leave out the stories of their own suffering. In South Africa, statement takers reminded women not to forget "to tell us what happened to you".[27] Requests to provide information to the commission anonymously should also be given serious consideration, as that may allow persons to speak about sexual abuse when they otherwise may not. Commissions should establish procedures to guarantee anonymity in appropriate cases.[28]

27. In some circumstances, alternative approaches to gather information about women's experiences in a conflict may be necessary. In Timor-Leste, where the number of women who came forward was much lower than expected, the gender unit commissioned 200 in-depth oral histories to supplement the commission's understanding of women's experiences. In Liberia, the United Nations Development Fund for Women organized peer meetings in affected communities, where women could share their experiences and have them transmitted to the Commission, rather than testifying in person.

28. Creating an enabling environment in the context of public hearings is also important. The Sierra Leonean commission held dedicated women's hearings, and funded women's groups to support those women who came before the commission. Women were given the options of testifying in camera, speaking in public from behind a screen or speaking openly to the audience.[29]

29. Addressing gender-based and sexual violence within a truth commission can also lay the foundation for recommendations regarding institutional and legislative reform in order to address an entrenched culture of discrimination.

B. International commissions of inquiry

30. Given the important role that international commissions of inquiry and similar investigatory bodies play in laying the foundation for transitional justice processes, a dedicated focus on gender-based and sexual violence by such commissions can bring about gender-sensitive truth, justice and redress measures. In recent years, there have been increasing efforts to ensure that gender-based and sexual violence is adequately addressed in the work of international commissions of inquiry. All such commissions and related investigative bodies established by the United Nations now include dedicated investigators specialized in the area of gender-based and sexual violence, with many recent international commissions of inquiry supported by UN-Women.

31. Recent commissions of inquiry, including on the Syrian Arab Republic,[30] Libya,[31] and Guinea,[32] have increasingly devoted attention in their work and reports to the issue of to sexual violence. The report of the commission of inquiry on the Democratic People's

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[26] Ruth Rubio-Marín, ed., *What Happened to the Women? Gender and Reparations for Human Rights Violations* (2006), p. 28; Nesiah and others, *Truth Commissions*, p. 17.

[27] Beth Goldblatt, "Evaluating the gender content of reparations: lessons from South Africa", in Rubio-Marín, *What Happened to the Women?*, p. 78.

[28] Updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), principle 10 (d).

[29] Nowrojee, "Making the invisible visible", p. 94.

[30] See A/HRC/S-17/2/Add.1, A/HRC/21/50, A/HRC/19/69, A/HRC/22/59, A/HRC/23/58, A/HRC/24/46, A/HRC/25/65.

[31] See A/HRC/19/68.

[32] See S/2009/693.

Republic of Korea[33] also paid specific attention to broader gender-based violations and crimes, particularly violence against women, and the impact of violations on particular groups, including women and children.

V. Criminal justice proceedings

A. Strengthening national criminal justice proceedings

32. States have primary responsibility to exercise jurisdiction over serious crimes under international law.[34] Accordingly, transitional justice strategies increasingly focus on strengthening national capacity to prosecute crimes of gender-based and sexual violence. Specialized chambers or courts have been established, for instance, in Croatia, the Democratic Republic of the Congo, Liberia, Serbia and Uganda, and prosecution and investigatory units have been created to deal specifically with gender-based and sexual violence. In Liberia, the sexual offences act of 2008 provided for a division of circuit courts in each county to deal with sexual offences, and the Sexual and Gender-Based Violence Crimes Unit was established. The United Nations Joint Human Rights Office of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) has worked to strengthen national capacity, including by assisting military magistrates to establish mobile courts and specialized prosecution support cells. Those efforts have resulted in increasing numbers of convictions being registered.[35] In Colombia, the Attorney General's Office adopted a plan of action to defend the rights of women victims of sexual violence in the context of the armed conflict. The plan includes the establishment of a disaggregated database, the adoption of an inter-institutional model of special investigation and attention to victims that simplifies proceedings to avoid re-victimization, and the creation of a subunit for the registration, assistance and orientation of victims of organized armed groups, which fall outside the scope of the Peace and Justice Law.

33. National capacity has also been strengthened through the creation of mixed chambers, located in the national judiciary but combining both national and international expertise. In Bosnia and Herzegovina for example, the War Crimes Chamber, staffed by both national and international staff, has prosecuted sexual violence as the crimes against humanity of rape, torture, sexual slavery, enslavement and persecution.[36]

34. An important focus of national capacity-building has been training investigators, prosecutors, judges, security officials, lawyers, medical staff, social workers and other rule-of-law actors. Capacity-building trainings have been conducted with United Nations assistance, including in the Democratic Republic of the Congo, Guinea, the Sudan (Darfur), and Kosovo.[37] Furthermore, UN-Women has partnered with Justice Rapid Response[38] to

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[33] A/HRC/25/63 and A/HRC/25/CRP.1.

[34] Updated set of principles for the protection and promotion of human rights through action to combat impunity, principle 20.

[35] See, inter alia, MONUSCO and OHCHR, "Progress and obstacles in the fight against impunity for sexual violence in the Democratic Republic of the Congo" (2014), paras. 29 and 31.

[36] See Human Rights Watch, *Narrowing the Impunity Gap: Trials Before Bosnia's War Crimes Chamber* (2007). See also A/HRC/23/49/Add.3, paras. 55–63.

[37] Reference to Kosovo should be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

[38] www.justicerapidresponse.org.

train and roster experts on sexual and gender crime and deploy them to international and national justice mechanisms.

35. There is increasing awareness of the need to address the obstacles faced by victims of gender-based and sexual violence in accessing criminal accountability processes. These include the often prohibitive cost of filing complaints, and the geographic inaccessibility of police stations, medical services needed to obtain forensic evidence, and courts, particularly for women victims living in remote areas without transportation and with childcare responsibilities. Victims also need free legal assistance to pursue cases, medical care and support to manage the health impact of gender-based and sexual violence, and education about the criminal justice system so that cases are not abandoned or withdrawn due to mistaken assumptions. Innovative strategies are being adopted to address some of those obstacles. Mobile courts in the Democratic Republic of the Congo have allowed for criminal proceedings to be conducted in remote areas and specialist pro-bono legal clinics have been established for survivors of gender-based and sexual violence. Efforts have been made to integrate the provision of legal and medical services, creating "one-stop shops" for child and women survivors of such violence.[39]

36. More analysis is also needed of the potential and limitations of justice processes based on customary law. Customary justice mechanisms tend to be more accessible than formal courts, providing a means of filling the gap in judicial services to resolve minor disputes, enjoying community legitimacy and having the potential to provide culturally appropriate remedies. However, previous patterns of gender discrimination of such mechanisms make resolving gender-based and sexual violence cases through them extremely problematic. Efforts should be made to transform customary justice systems in gender-sensitive ways, and to ensure their compatibility with international human rights standards, while not allowing this to substitute for formal justice sector reform. For instance, in Uganda, the local council courts are now required to ensure that a minimum of one third of their judges are women. In South Africa, the Law Reform Commission has made recommendations for harmonization of customary law with that country's Constitution.

B. International criminal justice and its impact at the national level

37. Over the past two decades, international justice approaches to gender-based and sexual violence have undergone significant transformation. Ad hoc tribunals, the Special Court for Sierra Leone and the International Criminal Court have contributed substantially to developing the legal and normative framework for such crimes, including through innovative jurisprudence. It is now well recognized that sexual violence can constitute a war crime, a crime against humanity or an act of genocide.[40] The establishment of the International Criminal Court has been particularly significant, with the Rome Statute recognizing the international crimes of sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence of comparable gravity.[41] Specific forms of gender-based and sexual violence directed at children,

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[39] See, for example, A/HRC/25/35, on access to justice for children.

[40] See for example International Criminal Tribunal for Rwanda, *Prosecutor* v. *Akayesu*, case No. ICTR-96-4-T, 731, Trial Chamber judgement, 2 September 1998; International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, *Prosecutor* v. *Kunarac et al.*, IT-96-23 & IT-96-23/1-A, Appeals Chamber judgement, 12 June 2002; Rome Statute of the International Criminal Court, arts. 7 and 8.

[41] Rome Statute, arts. 7 and 8.

particularly girl child soldiers, have been highlighted. Gender-sensitive evidentiary principles have been adopted. For instance, the Rules of Procedure and Evidence of the International Criminal Court do not allow for the admissibility of evidence of victims' previous sexual conduct in sexual violence cases, establish that proof of sexual violence does not require corroboration and elaborate circumstances in which consent cannot be inferred from the silence or actions of victims (see rules 71, 63 and 70).

38. Prosecutions before international and hybrid tribunals have greatly furthered the visibility of gender-based and sexual violence, in acknowledging and condemning the harms suffered by women in conflict, and in establishing an increasingly credible avenue for securing accountability for such violence.[42]

39. International legal developments have further catalysed the enactment of national legislation criminalizing gender-based and sexual violence, and have established legal precedents and international standards for domestic prosecutions and legislative reform. In recent years, for instance, the Democratic Republic of the Congo, Kenya and South Africa have amended their penal codes to criminalize a broad range of gender-based violations.[43] On the basis of the definitions provided in the Rome Statute, various states signatories have defined these crimes in their national legislation and criminalized them. However, more work is needed, with inadequate legal frameworks in some States remaining a significant obstacle to combating impunity. Inadequate or imprecise definitions of gender-based and sexual violence can leave out certain types of violations, make successful prosecutions more difficult and exclude groups of victims. National legislation should be in line with international standards, including as regards criminalizing gender-based and sexual violence as an international and domestic crime and using gender-neutral definitions that allow for prosecutions of sexual offences perpetrated against men as well as women. It should also codify States' obligations to combat the full range of gender-based and sexual violence, including, but not limited to, those crimes recognized in the Rome Statute. In Uganda, OHCHR is providing technical advice to the International Crimes Division of the High Court to ensure that its rules of procedure and evidence are in accordance with international best practice.

40. Important lessons have been also learned about the processes necessary to conduct gender-sensitive prosecutions and support victims' effective participation. Achieving accountability for gender-based and sexual violence requires sustained political will, targeted prosecution strategies and timely collection of all types of relevant evidence, including forensic evidence. As in other transitional justice processes, training of investigation, prosecution and judicial staff is crucial. Experience suggests that many victims of gender-based and sexual violence feel more comfortable recounting their experiences to women, demonstrating a particular need to recruit more qualified female investigators. Prosecutors need training in prosecution strategy and the jurisprudence around this type of violence, and judicial staff require instruction in the interpretation of legislation and precedents and in creating enabling courtroom environments. Medical staff need training also, in the medico-legal aspects of crimes of gender-based and sexual violence, including how to gather forensic evidence and refer patients to law enforcement agencies.

41. Justice is a process, not merely an outcome, and there is increasing awareness of the need for courtroom procedures that ensure the dignity and protection of victims. Victims

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[42] See, for example, A/67/792–S/2013/149, para. 112.

[43] See for example Kim Thuy Seelinger and others, "The investigation and prosecution of sexual violence" (2011). See also Fionnuala Ni Aoláin, "Gendered harms and their interface with international criminal law: norms, challenges and domestication" (2013).

should never be, or feel they have been, manipulated, used or endangered by justice processes. Courtroom protection protocols, such as voice and image distortion, anonymity provisions, use of pseudonyms, protective screens and closed court sessions can play an important role in this context. Witness protection programmes should apply before and during the trial, but also after its conclusion, and there should be follow-up mechanisms in place to track witnesses post-trial. In some cases, relocation and provision of new identities may be necessary.[44] Given the risk of witness identity being released, witnesses should be fully informed of the potential risk so that they are able to make an informed and autonomous choice about participation.

42. Victims and witnesses must also be protected from further traumatization. They should be provided with medical and psychological support, and children should receive specialist care and be called as witnesses only when their evidence is truly necessary. Judges, prosecutors, and lawyers must ensure that examinations and cross-examinations of victims are conducted respectfully and with sensitivity. The Rules of Procedure and Evidence of the International Tribunal for the Former Yugoslavia provide that "a Chamber shall, whenever necessary, control the manner of questioning to avoid any harassment or intimidation" (rule 75 (D)). Victims and witnesses must also be adequately prepared for the detailed and personal questions they are likely to face, particularly given the strong social taboos around discussing gender-based and sexual violence.[45] Where child victims are involved, special measures should be taken to ensure they understand the trial process, consistent with their evolving capacities.[46]

43. Criminal justice processes should not only protect, but also aim to empower victims and witnesses. At a minimum, victims and witnesses have the right to be regularly informed about the progress and ultimate outcome of the cases. Efforts should also be made to improve victim participation in prosecutions. For instance, the International Criminal Court provides for separate legal representation for victims, and victim participation in the pretrial, trial, sentencing and reparations phases. The Extraordinary Chambers in the Courts of Cambodia also provide for a victim participation process whereby victims who become party to the proceedings have the right to claim moral and collective reparations.[47]

VI. Reparations

44. International law establishes different forms of reparation to redress gross violations of human rights law and serious violations of humanitarian law, such as restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition.[48]

45. Reparation efforts have historically overlooked women and girls' needs and concerns. However, there has been an increasing recognition in recent years of the need for, and potential of, gender-sensitive reparations. Progress has taken place at the conceptual level, with the Nairobi Declaration on Women's and Girls' Right to a Remedy and

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[44] *Rule-of-Law Tools for Post-conflict States: Prosecution Initiatives* (HR/PUB/06/4), pp. 19–20.

[45] See Binaifer Nowrojee, "We can do better: investigating and prosecuting international crimes of sexual violence" (2004).

[46] UNICEF, Children and Transitional Justice Key Principles Document: For the Involvement of Children and Consideration of Children's Rights in Truth, Justice and Reconciliation Processes (2010), p. 3.

[47] A/HRC/18/23, para. 38.

[48] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, principle 18.

Reparation (2007) and the Special Rapporteur on violence against women, its causes and consequences, advocating for gender-sensitive reparations.[49] Also, in 2014, the Secretary-General issued a guidance note on reparations for conflict-related sexual violence, to provide further policy and operational guidance for United Nations engagement in this area.

46. Reparations occupy a special place among redress measures in view of their potential direct impact on victims of gender-based and sexual violence.[50] As such, it is particularly critical that victims of gender-based and sexual violence be involved in the design and implementation of reparations. Victims know their needs and priorities best, and are uniquely placed to address concerns about the modalities and distribution of reparations, including with regard to ensuring that benefits are accessible, equitable and effective. Accordingly, victim consultations have been a priority in several States. OHCHR, in collaboration with local stakeholders, has conducted extensive consultations with victims of gender-based and sexual violence in Nepal, Uganda and Kosovo.[51]

47. Supporting the effective participation of victims of gender-based and sexual violence in reparation efforts first requires outreach and awareness-raising activities. Outreach efforts should begin long before the reparations programme is fully designed and must be cognizant of the obstacles to victims' effective participation in transitional justice. Supportive spaces, confidentiality protection and the involvement of staff trained in gender-based and sexual violence are essential. In Uganda, OHCHR and the Uganda Human Rights Commission have been conducting training since 2008 to build awareness of reparations, while simultaneously conducting research on the views of conflict-affected communities. During outreach, codes in local languages have been used to refer to body parts and gender-based and sexual violence, allowing victims to circumvent the taboo of speaking about sexual violence.[52]

48. The criteria and procedures for accessing reparations must also be gender-sensitive. The imposition of strict application deadlines or closed-list systems, whether linked to participation in truth commissions or otherwise, is likely to exclude some victims. In Sierra Leone and Timor-Leste, the truth commissions decided that the potential list of victims should be kept open in order to ensure the widest possible access. Similarly, due to stigma, forcing survivors to "come out" as victims of gender-based and sexual violence in order to gain access to reparations may deter many. In Timor-Leste, rather than singling out victims of sexual violence, the Commission for Reception, Truth and Reconciliation (CAVR) recommended that the reparations be available to categories including single mothers, widows, and children affected by conflict, as well as survivors of gender-based and sexual violence, adding a layer of protection and confidentiality to female victims coming forward.[53] Access criteria must also be sensitive to the difficulties women and children face in complying with formal requirements, such as providing official documentation or holding a bank account, and to literacy and linguistic barriers. In Guatemala, victims of the internal armed conflict are offered psychological assistance and rehabilitation adapted to their ethnic and cultural identity. The National Reparations Programme there has issued two

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[49] See A/HRC/14/22. See also Inter-American Court on Human Rights, *González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, judgement of 16 November 2009.

[50] *Rule-of-Law Tools for Post-conflict States: Reparations Programmes* (United Nations publication, Sales No. E.08.XIV.3), p. 3.

[51] See, for example, OHCHR, *Healing the Spirit: Reparations for Survivors of Sexual Violence Related to the Armed Conflict in Kosovo* (2013).

[52] OHCHR, *'The Dust Has Not Yet Settled': Victims' Views on the Right to Remedy and Reparation* (2011), pp. 26–27. See also Feinstein International Center and others, *Making Gender-Just Remedy and Reparation Possible* (2013).

[53] CAVR, *Chega!*, chap. 11, p. 41.

manuals which contain good practices and lessons learned on how to conduct interviews with victims. In Colombia, a series of measures have been adopted to address sexual violence against women committed during the armed conflict. They include the setting up of a mobile unit which provides legal and psychological assistance to women and girl victims in remote areas.

49. Reparations proceedings should adopt adequate procedural and evidentiary rules for sexual violence. Onerous corroboration burdens and requirements that victims provide legal and medical evidence are likely to make proof impossible for many victims, particularly those who have become internally displaced persons. In Morocco, the Equity and Reconciliation Commission applied a presumption that women who had been in detention had also suffered gender-specific violations and awarded additional compensation to women claimants on that basis, without victims needing to make a specific claim.[54] In the Lubanga case, the International Criminal Court held a "balance of probabilities" test sufficient to establish the facts relevant to an order for reparations against the convicted person.[55] In the case of children born of rape, as many are not told the circumstances of their birth, consideration should be given to allowing carers to claim reparations on behalf of the child, without disclosing the claim to the child.

50. Given the obstacles to effective victim participation, adopting structural incentives to encourage gender-sensitive outreach and procedures should be encouraged. In Timor-Leste, CAVR recommended that 50 per cent of reparations resources be earmarked for women to ensure that the implementing mechanism makes a sufficiently strong effort to reach women and girls.[56]

51. One particularly important insight of recent years is that gender-sensitive reparations should strive to be transformative.[57] Reparations processes and benefits should focus, where possible, not on restoring victims to pre-existing positions of inequality, but on subverting the structural discrimination that enables gender-based and sexual violence, and contributing to a more gender-equal society. In Morocco, the Equity and Reconciliation Commission chose not to adopt the concept of "heir" defined in Moroccan laws of succession when distributing benefits to victims' families, in order to accord equal treatment to men and women successors. That has subsequently been used by some organizations in defending reforms to inheritance laws.[58] In Tunisia, sustained advocacy has similarly led to the reform of discriminatory inheritance laws that affect the receipt of reparations benefits.

52. Reparations programmes for gender-based and sexual violence should be comprehensive. Combining individual, collective, material and symbolic benefits can maximize the possibilities of redress for a larger number of victims.[59] In Sierra Leone, the truth commission recommended a comprehensive reparations programme, covering free health care, educational support, skills training, microcredit and microprojects, community reparations, symbolic reparations, provision of housing and pensions and a number of gender-specific institutional reforms. In 2010, the President, Ernest Bai Koroma, publicly

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[54] International Center for Transitional Justice, *Morocco: Gender and the Transitional Justice Process* (2011), p. 36.

[55] International Criminal Court, *Prosecutor* v. *Lubanga Dyilo*, decision establishing the principles and procedures to be applied to reparations, ICC-01/04-01/06-2904, Trial Chamber I, 7 August 2012, para. 253 (currently on appeal).

[56] Galuh Wandita and others, "Learning to engender reparations in Timor-Leste: reaching out to female victims", in Rubio-Marín, *What Happened to the Women?*, p. 308.

[57] See A/HRC/14/22.

[58] International Center for Transitional Justice, *Morocco*, p. 36.

[59] *Reparations Programmes*, p. 22.

apologized to the women of Sierra Leone for failing to protect them during the armed conflict and pledged to protect women's rights.

53. Collective reparations may have particular potential for victims of gender-based and sexual violence. They can reach a wide group of beneficiaries, prevent stigma by avoiding the identification of individual victims, and recognize the harm to families and communities intended and caused by such violence. Individual victims should, however, directly benefit from collective reparations and not feel excluded or marginalized, or even further stigmatized. In crafting collective reparations, adequate consultations with victims of gender-based and sexual violence should take place and aim to address their particular needs, for instance for specialized reproductive health care or fistula repair.[60] Collective reparations should complement rather than replace individual reparations.

54. While reparations and development constitute two distinct and separate rights, creating linkages with development actors and programmes could be beneficial for delivering sustainable and transformative reparations, particularly in countries affected by mass violations and poverty. International cooperation and assistance should not be a substitute for the role that States must play in reparations, including acknowledgement of responsibility for violations and using their financial and institutional capacity diligently to repair the harm suffered by victims.[61]

55. Regarding the different forms of benefits distributed, experience shows that women victims often prioritize service-based benefits, such as educational opportunities and access to health and psychological rehabilitation services. Care must again be taken not to blur the distinction between reparations and social rights, services and development measures to which the general population is entitled.[62] In relation to economic compensation, the obstacles faced by women in accessing and controlling money, including not holding a bank account, and pressure from family should be considered. Material benefits that can help women pursue what they perceive to be autonomy-enhancing projects and that, therefore, can be more transformative should be also considered. In Timor-Leste, in order to empower victims sustainably, CAVR recommended the provision of economic rehabilitation services, such as skills training and microcredit, rather than monetary compensation. Symbolic reparations can also play a valuable role in acknowledging gender-based and sexual violence and in affirming the position of victims as citizens and rights holders, particularly in the context of social stigma. However, victims' confidentiality must not be breached by measures of public recognition. Reparations programmes should pay more attention to guarantees of non-repetition of gender-based and sexual violence, which are likely to focus on the underlying structural causes of violence and therefore have transformative potential.[63]

56. The effectiveness of reparations efforts in several States, including Sierra Leone, South Africa and Timor-Leste, have been bolstered by urgent interim reparations programmes. Interim reparations can be valuable in meeting the immediate needs of victims of gender-based and sexual violence, as in Sierra Leone, where some victims received access to fistula surgery. Interim schemes may also provide important insights which can be applied to the design and implementation of the relevant State's subsequent comprehensive reparations programme. In Timor-Leste, the difficulties in engaging women in the interim

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[60] OHCHR, *'The Dust'*, p. 28.

[61] Guidance note of the Secretary-General on reparations for conflict-related sexual violence (2014), p. 10.

[62] A/HRC/14/22, para. 55.

[63] Ibid., para. 62.

reparations process informed many of the CAVR gender-sensitive recommendations for the proposed reparations programme.[64]

VII. Institutional reforms

57. Institutional reforms are necessary to prevent the repetition of gender-based and sexual violence, build sustainable peace and re-establish trust between victims and State institutions, which may have perpetrated gender-based violence. Institutional reforms also have important transformative potential. By focusing on the prevention of future violations, they can trigger discussion about the causes of gender-based and sexual violence, prevent the normalization of such violence in the post-conflict context and contribute to building a more inclusive and gender-just political order.

58. In recent years, there has been increasing awareness of the need to address gender-based and sexual violence as part of justice and security sector reform. Furthermore, the Team of Experts on the Rule of Law and Sexual Violence in Conflict, established in 2009 pursuant to Security Council resolution 1888 (2009), has provided technical advice and capacity-building assistance in, inter alia, the Central African Republic, Colombia, Côte d'Ivoire, the Democratic Republic of the Congo, Guinea, Somalia and South Sudan.[65] In the Democratic Republic of the Congo, for instance, the Team provided support to investigations and prosecutions by military magistrates and military mobile courts, and assisted the national authorities in the development of an implementation plan for the joint communiqué on the fight against sexual violence in conflict signed by the Government and the United Nations in March 2013.

59. Security-sector vetting must disqualify individuals who have perpetrated gender-based and sexual violence.[66] Failure to do so puts women and children at risk of further violence from those actors, constitutes a significant barrier to seeking justice assistance from the State, erodes public faith and confidence in rule-of-law institutions, humiliates victims, and sends the message that gender-based and sexual violence is socially acceptable.[67] Conversely, the disqualification of perpetrators from security roles can itself constitute a measure of satisfaction to victims.[68]

60. Furthermore, structural reforms to enhance institutional accountability will often be necessary. This may include developing professional standards of conduct, complaint and disciplinary procedures and oversight mechanisms. For instance, initiatives in Liberia, Sierra Leone and Kosovo have harnessed the opportunity that institutional reform presents to increase the participation of women in security and law-enforcement forces,[69] recognizing the links between improved gender parity, higher rates of reporting of gender-based and sexual violence, and improvements in institutional gender-sensitivity.

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[64] Wandita and others, *Learning to Engender*, pp. 309–310.

[65] See the annual report of the Team, available from www.stoprapenow.org/uploads/advocacyresources/1399901202.pdf.

[66] Integrated technical guidance note on gender-responsive security sector reform. See also A/67/792–S/2013/149, para. 128 (f).

[67] See A/67/792–S/2013/149, para. 7, in which the Secretary-General notes that incidents of sexual violence have occurred where improperly vetted or trained security forces or ex-combatants have been redeployed or cantoned in proximity to civilian centres.

[68] *Rule-of-Law Tools for Post-conflict States – Vetting: An Operational Framework* (HR/PUB/06/5), p. 5.

[69] UN-Women, *Gender-Sensitive Police Reform in Post-conflict Societies* (2007), pp. 2, and 6–7.

61. The criminalization of all forms of gender-based and sexual violence, including rape in marriage and domestic violence, has been recognized as necessary to break the silence around and create a mandate to prevent and punish such violence. National laws should be harmonized to ensure consistency and clarity. Policy and contextual obstacles, such as requirements for medical certificates in rape cases, should similarly be reformed.[70]

62. Gender-sensitive training and capacity-building for security sector and law enforcement institutions to respond to gender-based and sexual violence is critical. In Rwanda, standard operating procedures for child, domestic and gender-based and sexual violence have been developed, along with a training curriculum. An important development has been the establishment of women's police stations or specialist gender-based and sexual violence units in the police and military in Liberia, Rwanda, Sierra Leone, Timor-Leste and Kosovo. The units are often staffed exclusively by female officers, or specially trained staff, and both directly support victims' access to justice and contribute to raising awareness about gender-based and sexual violence in the community and the institutions. In Kosovo, the creation of a police gender desk helped bring human trafficking and forced prostitution into the open.[71] In Rwanda, the Gender Desk of the military has conducted training on women's rights and gender-based violence for almost 5,000 members of the armed forces, as well as civilians, with support from the United Nations.[72] More efforts are needed to ensure that those units are adequately resourced, including with appropriate physical and communications infrastructure, such as private interview and medical examination spaces. Additional support is needed within the justice sector to enable effective prosecution of cases.

63. Notwithstanding the importance of justice and security sector reforms, institutional reforms must also focus on ending gender discrimination more broadly, including through constitutional guarantees of gender equality, repealing discriminatory legislation, and adopting laws and policies which advance women's rights. For example, reforms that strengthen women's rights in relation to marriage, divorce, land and inheritance can contribute to addressing the economic insecurity and dependence that leaves women vulnerable to gender-based and sexual violence.

VIII. Conclusions and recommendations

64. **There has been notable progress in addressing gender-based and sexual violence by transitional justice processes, for instance, by focusing on the effective participation of victims of such violence and their particular needs, and striving to have a transformative impact. Recent examples show that greater attention has been given to such violence and some good practices have developed. Nevertheless, more efforts are needed to ensure that transitional justice processes address the full spectrum of gender-based and sexual violence. The good practices highlighted in the present study should be emulated in other countries concerned, while taking into account the specific national context. The study also contains recommendations about how transitional justice measures can be improved to address gender-based and sexual violence.**

65. **States play an important role in shaping the legal framework of new institutions and undertaking reforms. Judges and prosecutors, as well as legislators**

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[70] See for example A/67/792–S/2013/149, para. 35.

[71] UN-Women, *Gender-Sensitive Police Reform*, p. 5.

[72] UN-Women, *Case Studies of Gender-Sensitive Police Reform in Rwanda and Timor-Leste* (2009), pp. 2 and 11.

and the executive, should adequately address gender-based and sexual violence in their work. Transitional justice mechanisms, operating independently, should fully take into account issues of gender-based and sexual violence in their methods of work, operational structures, priorities, recruitment procedures, analysis, findings and recommendations. Civil society and other independent bodies should also play a role, for instance in raising awareness of, advocating for and supporting the inclusion of issues of gender-based and sexual violence in transitional justice processes.

66. **It is recommended that the Human Rights Council retain its focus on how the United Nations system addresses the various components of transitional justice in practice, through reports by OHCHR.**

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Birth registration and the right of everyone to recognition everywhere as a person before the law

Report of the Office of the United Nations High Commissioner for Human Rights

Summary

The present report contains an overview of the global rates of birth registration, a universal human right recognized in a number of international instruments. It considers the consequences and impact of non-registration on human rights, particularly since the right to be registered at birth is closely linked to the realization of many other rights, such as the right to health and the right to education. It also analyses the barriers to access to birth registration, provides examples of good practices and makes a number of recommendations to ensure the universal implementation of this right.

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I. Introduction

1. The present report is submitted to the Human Rights Council pursuant to Council resolution 22/7, in which it requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to prepare a report, in consultation with States, United Nations agencies, funds and programmes, non-governmental organizations and other relevant stakeholders, on legal, administrative, economic, physical and any other barriers to access to universal birth registration and possession of documentary proof of birth, as well as on good practices adopted by States in fulfilling their obligation to ensure birth registration, and to submit it to the Council at its twenty-seventh session.

2. OHCHR received contributions from States, intergovernmental organizations, national human rights institutions, non-governmental organizations and academia.[1]

II. Birth registration: overview

3. Birth registration is a fundamental right, recognized by article 24, paragraph 2 of the International Covenant on Civil and Political Rights and article 7 of the Convention on the Rights of the Child. The fulfilment of the right to be registered at birth is closely linked to the realization of many other rights; socioeconomic rights, such as the right to health and the right to education, are at particular risk where birth registration is not systematically carried out, and the protection of children is jeopardized.

4. Birth registration is the continuous, permanent and universal recording within the civil registry of the occurrence and characteristics of birth, in accordance with the national legal requirements. It establishes the existence of a person under law, and lays the foundation for safeguarding civil, political, economic, social and cultural rights.[2] As such, it is a fundamental means of protecting the human rights of the individual.

5. On a procedural level, birth registration involves three interrelated processes. First, there must be the declaration of the occurrence of the birth to civil registrars. Second, once notified, civil registrars officially record the birth. Registration should include the individual's name, date and place of birth, as well as, where possible, the name, age or date of birth, place of usual residence and nationality of both parents. Third, the State issues a birth certificate, a personal document to attest birth registration and the most visible evidence of the State's legal recognition of the child. Whether this procedure is followed automatically after registration or requires another application depends on the country; it is vital, however, that this document is accessible easily and provided free of charge.

6. While the global rate of birth registration grew from approximately 58 to 65 per cent between 2000 and 2010, the United Nations Children's Fund (UNICEF) estimates that 230 million children under the age of 5 still have not been registered.[3] Non-registration is a particularly serious problem in developing countries, in sub-Saharan Africa, and in Asia; however, even in industrialized countries with high overall rates of birth registration, pockets of marginalized and disadvantaged groups who are not registered are often

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[1] See also: www.ohchr.org/EN/Issues/Children/BirthRegistration/Pages/ReportOnBirthRegistration.aspx.

[2] See www.unicef.org/protection/57929_58010.html.

[3] UNICEF, *A Passport to Protection: A Guide to Birth Registration Programming*, December 2013 (available from www.refworld.org/pdfid/52b2e2bd4.pdf), pp. 6 and 11.

encountered. Furthermore, the quality of registration systems is also important, and should be accurate, efficient and permanent.

7. Birth registration should be part of a wider civil registration system that includes the free and universal recording of the occurrence and characteristics of key events – births, deaths, adoptions, marriages and divorces – and other civil status events pertaining to the population. These records are the main source of vital statistics; the complete coverage, accuracy and timeliness of civil registration is therefore essential, as is the confidentiality of personal data handled by the system. These two systems are interrelated and must be developed holistically; improvements in birth registration are rarely possible without the improvement of the civil registration system as a whole.[4]

III. International legal framework

8. The right to birth registration and the right of everyone to recognition everywhere as a person before the law is a universal human right, first acknowledged in article 6 of the Universal Declaration of Human Rights and specifically recognized in article 24, paragraph 2 of the International Covenant on Civil and Political Rights, which states that every child shall be registered immediately after birth. In its general comment No. 17 on the rights of the child,[5] the Human Rights Committee stated that article 24, paragraph 2 should be interpreted as being closely linked to the right to special measures of protection, and that the main purpose of the obligation to register children after birth is to reduce the danger of abduction, sale of or traffic in children, or of other types of treatment that are incompatible with the enjoyment of the rights provided for in the Covenant.

9. The Convention on the Rights of the Child reinforces the fundamental importance of the right to birth registration in its article 7, which states that the child should be registered immediately after birth and have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. It further provides for States parties to ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

10. All rights under the Convention on the Rights of the Child, including article 7, must be in full conformity with the general principles of the Convention, namely non-discrimination, the best interests of the child, the right to life, survival and development and the right of the child to express his or her views.

11. In the context of birth registration, non-discrimination implies that States must ensure that access to registration is not undermined by discrimination of any kind, including on the basis of the child's – or the child's parent's or legal guardian's – race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. All children should have access to birth registration in the country where they are born, including non-nationals, asylum seekers, refugees and stateless children.[6]

12. The importance of birth registration in a child's life and the impact of non-registration on the enjoyment of the rights of the child are acknowledged regularly by the

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[4] Ibid., p. 21.

[5] *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 40* (A/44/40), annex VI, para. 7.

[6] Rached Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child*, (UNICEF, 2007), p. 97.

Committee on the Rights of the Child, in its general comments No. 3 (HIV/AIDS),[7] No. 6 (treatment of unaccompanied and separated children),[8] No. 7 (early childhood),[9] No. 9 (children with disabilities),[10] No. 10 (juvenile justice),[11] No. 11 (indigenous children),[12] No. 13 (right to freedom from all forms of violence)[13] and No. 15 (right of the child to health).[14]

13. As described by the Committee on the Rights of the Child in its general comment No. 7, children who are not registered may be denied basic rights, such as health, education and social welfare. It therefore recommended that States take all necessary measures to ensure that all children are registered at birth, which can be achieved through a universal, well-managed registration system that is accessible to all and free of charge. The Committee added that an effective system must be flexible and responsive to the circumstances of families, and reminded States of the importance of facilitating late registration of birth and ensuring that children who have not been registered have equal access to health care, protection, education and other social services. In its general comment No. 13, the Committee adopted a progressive view, clearly indicating that the lack of birth registration can be a form of neglect and of negligent treatment when those responsible for the child's care have the means, knowledge and access to services to do so.

14. The most recent international human rights instruments all contain provisions relating to birth registration, including article 29 of the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families and article 18 the Convention on the Rights of Persons with Disabilities.

15. The right to birth registration is not restricted to human rights law; indeed, it is intrinsically connected to issues arising in both international refugee law and international humanitarian law.[15] In this regard, the Executive Committee of the Office of the United Nations High Commissioner for Refugees (UNHCR) has consistently raised the issue of birth registration of refugees, asylum seekers and stateless persons in its Conclusions on International Protection, nine of which include specific recommendations on birth registration and the right to identity. In October 2013, the Executive Committee adopted a Conclusion on International Protection that specifically focused on civil registration. The Conclusion, in which the Executive Committee encouraged States to ensure that every child is registered immediately after birth without discrimination of any kind, is a milestone document that sets up a framework of action for the protection of the rights of refugees, asylum seekers and stateless persons. UNHCR has furthermore made birth registration a global strategic priority. The *Framework for the Protection of Children*, issued by UNHCR in 2012,[16] also includes a specific objective to ensure girls and boys obtain legal documentation, including birth certificates, in a non-discriminatory manner (Goal 4).

16. At the intergovernmental level, both the General Assembly and the Human Rights Council have been particularly influential in highlighting the importance of universal birth registration. The Assembly has included the issues of birth registration and preservation of identity in at least one resolution every year since 2001. In its resolutions, the Assembly

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[7] CRC/GC/2003/3.

[8] CRC/GC/2005/6.

[9] CRC/C/GC/7/Rev.1.

[10] CRC/C/GC/9 and Corr.1.

[11] CRC/C/GC/10.

[12] CRC/C/GC/11.

[13] CRC/C/GC/13.

[14] CRC/C/GC/15.

[15] See the Convention on the Reduction of Statelessness, arts. 1-6, and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 50.

[16] Available from www.refworld.org/docid/4fe875682.html.

consistently urged States to intensify their efforts in order to ensure the implementation of the right of the child to birth registration as recognized by law. The Human Rights Council has also addressed the issue of birth registration in thematic resolutions, including on migration, the rights of the child, arbitrary deprivation of nationality and the fight against sexual violence against children.

IV. Impact of non-registration on human rights

17. The right to birth registration is not only a right of the child but of all human beings. Birth registration, and more especially a birth certificate, is a life-long passport for the recognition of rights, which may be necessary to, inter alia, vote, marry or secure formal employment. In some countries, it may be needed to obtain a driver's licence, to open a bank account, to have access to social security or a pension, to obtain insurance or a line of credit, and, significantly, to be able to register one's own children. It is also vitally important for securing inheritance and property rights, particularly for women and within families. A recent country-specific study suggests that further research is needed to evaluate fully the link between access to services and birth registration.[17]

18. The right to birth registration is closely linked to the realization of many other rights, and has profound consequences for children's enjoyment of their rights with regard to protection, nationality, access to social and health services, and education. In particular, inequality in birth registration rates may compound inequalities in access to basic services,[18] besides heightening discrimination and vulnerability. An effective civil registration and statistics system is therefore an important first step to ensuring the protection of children.

A. Right to education

19. Birth registration can have a fundamental impact on the right to education for children. The Committee on the Rights of the Child has, on numerous occasions, expressed concern at cases of children without a birth certificate being refused schooling, in violation of their right to education under article 28 of the Convention on the Rights of the Child. Furthermore, in some countries, while children are permitted to attend primary school without evidence of birth registration, a certificate is required to be able to take the final school examinations and thus to receive relevant academic qualifications or to progress to secondary school. Access to educational scholarships, free books and uniforms also often depend on the presentation of a birth certificate.[19]

20. While some States have argued that the requirement for registration to attend school reinforces both education and demand for registration, the relationship between these services is ambiguous; such requirements can even have a negative impact if birth registration is not universally accessible.[20] Under the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights, States have an obligation to ensure compulsory and free primary education for all. In its general comment

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[17] Plan International, Birth Registration and Children's Rights: A Complex Story, May 2014. Available from http://plan-international.org/about-plan/resources/publications/campaigns/birth-registration-research/.

[18] UNICEF, *A Passport to Protection* (see footnote 3), p. 20.

[19] Plan International, *Count Every Child: The Right to Birth Registration*, 2009 (available from http://plan-international.org/about-plan/resources/publications/campaigns/count-every-child/), p. 19.

[20] UNICEF, *A Passport to Protection* (see footnote 3).

No. 11, the Committee on Economic, Social and Cultural Rights defined "compulsory" as meaning that no one, including the State, is entitled to treat as optional the decision of whether a child should have access to primary education.[21] Both above-mentioned treaties also prohibit discrimination based on birth. Making birth registration a prerequisite for enrolment into or completion of primary education would therefore not be in compliance with the right to education guaranteed under these treaties.

B. Right to health

21. According to the World Health Organization, of the 6.6 million children who died before their fifth birthday in 2012, almost half died of infectious causes, nearly all of which were preventable.[22] These children may be harder to reach for health-care workers and overlooked in public health planning. Furthermore, in some countries, they may not have access to immunization or other health-care programmes. OHCHR noted a correlation between children who are registered and those who are fully vaccinated, receive vitamin A supplementation, and/or are taken to a health-care professional when they are ill.[23]

22. In its general comment No. 3, the Committee on the Rights of the Child emphasized the critical implications of proof of identity for children affected by HIV/AIDS, including in safeguarding their rights to inheritance, education, health and other social services. According to the Committee, birth registration is necessary to minimize the impact of HIV/AIDS on the lives and human rights of affected children, and in particular to protect children from abuse and exploitation, especially where they have been separated from their family as a result of the disease.[24]

C. Statelessness, nationality and citizenship

23. Birth registration is fundamental to the prevention of statelessness. Not all children born without birth registration are stateless; but for those born in certain situations (for example, to parents from different countries, in a migratory setting, to refugee or asylum seeker parents or in border areas), lack of birth registration can cause statelessness.[25]

24. While birth registration does not in itself confer citizenship on a child, it is essential to ensure the right of every child to acquire a nationality, as it constitutes an important form of proof of the link between an individual and the State. It documents where a child was born and who the child's parents are, thus providing important evidence of whether a child can acquire citizenship on the basis of place of birth (*jus soli*) or of descent (*jus sanguinis*).[26]

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[21] E/C.12/1999/4, para. 6.

[22] WHO, "Children: reducing mortality", Fact sheet No. 178, September 2013, available from www.who.int/mediacentre/factsheets/fs178/en/.

[23] A/HRC/22/31, para. 81.

[24] CRC/GC/2003/3, para. 32.

[25] UNHCR and Plan International, *Under the Radar and Under Protected*, 2012 (available from http://plan-international.org/about-plan/resources/publications/campaigns/under-the-radar-and-under-protected/), p. 5.

[26] Ibid. See also UNICEF, *A Passport to Protection* (see footnote 3), p. 12.

D. Child labour

25. Birth registration also plays a vital role in the protection of children from child labour. The International Labour Organization estimates that more than 168 million children are in child labour, of which 85 million are in hazardous work or work that is likely to harm their health, safety or morals, and which should be prohibited for anyone under the age of 18.[27] While legislation setting legal minimum age for employment is important, it will have little effect if the means to prove the age of the child are not available. As such, birth registration and the accessibility of a birth certificate are prerequisite conditions for the effective prevention and elimination of child labour, including in its worst forms.

26. In some countries, a birth certificate is required to obtain a social security number necessary for working in the formal sector, meaning that all individuals – whether adults or children – without birth registration or access to a birth certificate are marginalized to the informal sector, where there is less scrutiny and a greater risk of exploitation and hazardous work.[28] Furthermore, in some States, employers exploit the lack of birth registration to hire children as cheap labourers, knowing that they will have little recourse before the law.[29]

E. Children in conflict with the law

27. Birth registration is particularly important for children in conflict with the law. Article 40 of the Convention on the Rights of the Child provides these children with special protection, including the protection against prosecution as an adult, while article 37, paragraph c includes the right not to be detained with adults. Neither of these rights can be effectively safeguarded without proof of age.

28. The importance of birth registration was set out by the Committee on the Rights of the Child in its general comment No. 10 (juvenile justice), which clarified that a child without a provable date of birth is extremely vulnerable to all kinds of abuse and injustice in relation to the juvenile justice and penal system.[30] The need to ensure birth registration to secure children's rights and safeguards to prevent and protect children from violence within the juvenile justice system was also established by OHCHR, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children in their joint report on the prevention of and responses to violence against children within the juvenile justice system.[31]

F. Early and forced marriage

29. Birth registration can also contribute to the elimination and prevention of the practice of early and forced marriage. The Committee on the Elimination of Discrimination against Women and other treaty bodies require States to register births and marriages as a means to facilitate monitoring of the age of marriage and to support the effective implementation and enforcement of laws on the minimum age of marriage.[32]

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[27] See ILO, "Child Labour", at www.ilo.org/global/topics/child-labour/lang--en/index.htm.

[28] Plan International, *Count Every Child* (see footnote 19), p. 20.

[29] Ibid., p. 21.

[30] CRC/C/GC/10, para. 39.

[31] A/HRC/21/25, para. 67.

[32] See A/HRC/26/22.

G. Human trafficking

30. Individuals without birth registration or a birth certificate who wish to migrate are especially vulnerable to smuggling and trafficking. An individual without legal identity documents has to travel by illegal means and is more likely to have to rely on illicit intermediaries to facilitate migration.[33] They are therefore at greater risk of trafficking and exploitation.

31. Furthermore, children who have not been registered are particularly vulnerable to child traffickers whether or not they are in a migration situation. The legal invisibility of unregistered children makes it more likely that their disappearance and exploitation will go unnoticed by authorities. This is particularly the case where the trafficking occurs across international borders; there is no proof of the child's existence, so national authorities may be unwilling or unable to pursue the matter.[34]

H. Sale of children

32. Children without birth registration have been shown to be particularly vulnerable to exploitation in the area of illegal adoption and the sale of children. In certain countries, the illegal procurement, buying and selling of children for intercountry adoption was made possible through the falsification of documents and the production of false birth certificates. Children whose births are not registered are particularly targeted. In her recent report to the General Assembly, the Special Rapporteur on the sale of children, child prostitution and child pornography stated that children whose birth had been registered were less likely to be sold or illegally adopted, in part because they had proof of who their parents were.[35]

I. Armed conflict and emergency situations

33. Despite the prohibition of the involvement of children in armed conflict under the Optional Protocol to the Convention on the Rights of the Child, it is estimated that there are 250,000 child soldiers active in the world today.[36] The importance of birth registration can be seen in both the prevention of recruitment and of early conscription (for example, article 3, paragraph 3 (d) of the Optional Protocol requires voluntary recruits to provide reliable proof of age prior to acceptance) but also in protecting children's rights after they have been rescued from this form of exploitation.

34. Where children have been exploited in armed conflict, birth registration is vital to ensure that they have effective access to justice, as successful prosecution requires proof that the individual was indeed a child at the time of recruitment. Furthermore, birth registration is of great importance in the reunification and reintegration process; where children are not registered, it is difficult to re-establish their identity and return them to their homes.[37]

35. The importance of birth registration is also manifest during and in the aftermath of emergency situations. In such situations, the separation of children from their parents and

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[33] Plan International, *Count Every Child* (see footnote 19), p. 22.

[34] UNICEF, *Birth Registration: Right from the Start*, Innocenti Digest No. 9, March 2002 (available from www.childinfo.org/files/birthregistration_Digestenglish.pdf), p. 5.

[35] A/66/228, para. 31 (a).

[36] War Child, "Child Soldiers" (available from www.warchild.org.uk/issues/child-soldiers).

[37] Plan International, *Count Every Child* (see footnote 19), p. 21.

communities is common, and non-registration can be a significant barrier to family tracing and reunification. Reuniting children with family members in emergency situations is the best way to provide children with safety, security and care; without a birth certificate or other form of identification, however, this process can be exceedingly difficult, especially for young children.[38]

V. Good governance

36. To protect the rights of all individuals, birth registration must be part of a comprehensive civil registration system that is continuous, permanent, compulsory and universal.[39] Civil records must be kept in a form that cannot easily be destroyed. Furthermore, retrieval of records should be possible for persons at any stage of their life.

37. The security of the civil registration and vital statistics system, and of the birth certificate that is issued as proof of registration, is also vital. The birth certificate is often a "breeder" document for other forms of identification, including identity papers, passports, driver's licences and voter registration cards.Unlike these documents, however, it is not tied to the individual by a photograph or biometric data. The use of fraudulent birth certificates to obtain genuine identification documents under a false name or age is increasing, and poses a threat to national and international security.[40]

38. While birth registration within such a system is a fundamental human right, its impact goes beyond the individual to have vital importance for the State, and a profound effect on governance at the national and international levels in improving services and ensuring accountability.

39. The demographic information provided by a comprehensive civil registration system, including birth registration, is crucial for government planning and decision-making, as well as for the monitoring of programmes for children, families and the broader community. Accurate information gives the State the ability to not only track, counter and prevent abuse against individuals but also to plan service provision for children and their caregivers and to evaluate the impact of policies; for example, it can permit the Government to plan the construction of adequate numbers of schools and to train a sufficient number of nurses and doctors in specialist areas to treat the needs of the population.

40. This aspect is particularly important for minority groups, as birth registration provides a more accurate measurement of child health and more accurate health statistics in high-risk populations.[41] In fact, UNICEF found that, when lack of birth and death registration is concentrated among population groups at high risk (such as minority groups, indigenous populations, and families living in slums), child mortality may be systematically underestimated.[42] In this respect, birth registration must be universal. Where coverage is not complete, data from registration are skewed towards those with a higher income and with

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[38] Innocenti Insight, *Birth Registration and Armed Conflict*, UNICEF, 2007, p. vii. See also A/HRC/19/63.

[39] UNICEF, *A Passport to Protection* (see footnote 3), p. 22.

[40] Ibid., p. 48.

[41] Mariana Muzzi, "UNICEF good practices in integrating birth registration into health systems (2000-2009)", January 2010 (available from: www.unicef.org/protection/Birth_Registration_Working_Paper(2).pdf), p. iv.

[42] Ibid., p. 11.

better education, and towards urban populations (as those who are overrepresented among those who are registered).[43]

41. Birth registration can also serve as the backbone of an electronic administration system, thus help to improve monitoring, planning and service delivery across a wide range of governmental services.[44] Its importance for the State indeed cannot be underestimated, and the advantages of this will trickle down to individuals.

42. In addition, birth registration plays a key role in fostering democratic processes, as it is a vital link in establishing nationality, and thus conferring on the individual the rights and responsibilities of citizenship. The provision of a free and universal legal identity through birth registration was highlighted as a crucial element of ensuring good governance and effective institutions by the High-level Panel Secretary-General's of Eminent Persons on the Post-2015 Development Agenda. The Panel considered that providing citizens with a legal identity is one of the most basic institutional responsibilities of a Government, which requires universal birth registration.[45]

43. Given that electoral roles are often compiled from the civil register, the transparency and credibility of voting and the prevention of electoral fraud depend on accurate data on births and deaths.[46] Registration goes beyond the right to vote, however, and extends to the possibility of standing for electoral office and of taking an active role in political life.

VI. Implementation challenges

A. Political and legal challenges

44. Birth registration thus has both legal and statistical functions for States and individuals. Many countries, however, are yet to recognize this dual role and the intrinsic links between a functioning civil registration system and social and economic development, day-to-day governance and human rights.[47]

45. In many circumstances, civil registration laws have not been revised for many years, and outdated laws and procedures inherited from the past are still in place. The rationales and objectives of registration laws therefore do not always reflect social and cultural realities of the country.[48]

46. Another difficulty lies in the way in which civil registration has been previously used as a source of information to manage the population, an instrument to control the free movement of citizens. Similarly, in areas where there has been ethnic conflict, civil records have at times been used to engage in persecution. These historical circumstances may affect the willingness of parents to interact with official institutions and therefore to register their children.

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[43] UNICEF, *A Passport to Protection* (see footnote 3), p. 24.

[44] Mariana Muzzi, "UNICEF Good Practices" (see footnote 41), p. iv.

[45] High-level Panel of Eminent Persons on the Post-2015 Development Agenda, *A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development*, 2013, p. 50.

[46] UNICEF, *Birth Registration* (see footnote 34), p. 7.

[47] Economic Commission for Africa, Reforming and Improving Civil Registration and Vital Statistics Systems in Africa (E/ECA/CMRCR/2/EXP/4), para. 18.

[48] UNICEF, *A Passport to Protection* (see footnote 3), p. 36.

47. It is important that States nurture the trust of the public, reassuring it that civil registration will bring benefits to them, and not be misused as an instrument for repression.[49] Confidentiality is vital to an effectively functioning system, and it is crucial that the States demonstrate that it is worthy of being trusted with this information.

1. Budgets

48. Small budgets and competing demands may make it difficult for Governments to treat birth registration with the priority that it deserves. This can lead to underresourcing and a lack of personnel and facilities to manage the registration system.

49. It is important to note, however, that a country can realize a high birth registration rate even with a low level of per capita income. In countries with an income of above $6,000 per capita, it is likely that the birth registration rate will be above 90 per cent. In countries with an income below that level, the relationship between income and birth registration rate is less clear; some countries have complete coverage, while others still have a very low rate.[50]

50. Clear budgetary allocation is of particular importance, especially in countries with a decentralized civil registration system, where while the national authority has technical responsibility, local registration officials depend, administratively and financially, on local authorities.[51]

51. Furthermore, it is important that public funding is allocated to birth registration, and that the State not simply rely on foreign funds or external funding sources. Government ownership with a budgetary commitment for birth registration as part of the overarching civil registration system is the only means to ensure sustainability.

2. Resources

52. In many cases, economic barriers due to a lack of State resources allocated to birth registration can in turn lead to institutional barriers. A lack of registration supplies, such as registration books, paper for standardized forms, and pens for signing the register, have all been noted as reasons for non-registration in various countries.

53. Human resources are also a significant problem. Many States do not have sufficient human resources to carry out registration, or have personnel that are poorly trained and do not know their duties. Poor working conditions and lack of appropriate staff support can lead to inaccurate registration records and, more worryingly, corruption and fraud. Furthermore, civil registration is often simply one task of many that officials are required to perform; where pay is low, it may be also seen as an added burden and consequently given low priority.[52]

B. Information and awareness-raising

54. The provision of information to the community and social awareness of birth registration are among the most valuable tools in encouraging birth registration. In many communities, registration is seen as little more than a legal formality, and neglected for

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[49] UNICEF, *Strengthening Birth Registration in Africa: Opportunities and Partnerships*, 2010 (available from www.unicef.org/esaro/Technical_paper_low_res_.pdf), p. 14.

[50] Ibid, p. 36.

[51] UNICEF, *A Passport to Protection* (see footnote 3), p. 91.

[52] UNICEF, *Birth Registration* (see footnote 34), p. 13.

other problems that are more immediate and tangible.[53] Often parents are unaware of their right to register their child and of its importance until they find themselves in a situation where they need proof of identity, such as when seeking access to schooling or health services.[54]

55. This is a fundamental problem that many countries are working hard to address. While top-down approaches to mandating birth registration can be useful, it is vital that they are combined with a wider recognition among communities of the importance of this issue; greater demand for such services will put pressure on the Government to improve its systems and to provide universal access. Awareness-raising is an ongoing process, not simply a one-off activity.

C. Accessibility

56. Social awareness of the importance of birth registration is of little value without measures to facilitate access to this right. In many countries, geographical obstacles are the most persistent challenges to achieving high levels of birth registration. This is the case in countries where the majority of the population live in rural areas, with the bulk of public services being provided in a few major towns. This is highlighted by the differentials in urban and rural registration rates: globally, children living in urban areas are one and a half times more likely to be registered than children living in rural areas.[55]

57. Accessibility of registration depends not only on location but also on infrastructure and the availability of public transport.[56] The cost of travelling a long distance to register a child may be not only a financial burden but also have opportunity costs, such as the time spent away from work to make the journey. In addition, in many countries, the complex procedure requires multiple visits, creating an additional obstacle to birth registration for populations who are located in remote areas.

58. The proliferation of registration offices is not, however, necessarily advantageous. Proximity of service to the population is important, but it must be balanced against the financial cost of establishing numerous registration offices that are not feasible because of their minimal workload. Other solutions must therefore be sought for service delivery; for example, interoperability with existing services, such as health and education, and the use of new technology for vital event notification.[57]

59. Registration must not only be physically accessible, but socially accessible too. Materials concerning registration must be provided in local and minority languages. Furthermore, the information must also be presented in a form that is comprehensible, and the forms to be filled in simple enough to ensure that those with low literacy levels can understand them. Information in an easily accessible form is not only important at the time of registration, but also when conducting awareness-raising programmes.

60. Excessive documentation requirements is another obstacle to registration. In many countries, birth registration requires a child's parents to produce a set of documents, such as their own identity documents, birth registration documents and/or documents issued by

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[53] Ibid., p. 12.

[54] See UNICEF, *Every Child's Birth Right: Inequalities and trends in birth registration*, 2013 (available at www.unicef.org/media/files/Embargoed_11_Dec_Birth_Registration_report_low_res.pdf), p. 20.

[55] Ibid., p. 23.

[56] UNICEF, *The 'Rights' Start to Life: A Statistical Analysis of Birth Registration*, 2005 (available from www.unicef.org/publications/files/R55BirthReg10a.pdf), p. 6.

[57] UNICEF, *A Passport to Protection* (see footnote 3), p. 88.

other authorities or entities. In certain cases, documentation of grandparents of the child may also be required. Obtaining these documents can be exceedingly difficult or impossible, in particular where there is a low level of birth registration and documentation within the general population or a specific group, such as in the case of a minority population. As a result, flexible rules of proof are required.

D. Costs

61. In many countries, the cost of birth registration is prohibitively expensive for most families. Costs can be incurred by direct payments for registration or the birth certificate, or indirect costs for travel and opportunity costs, as discussed above.[58] Unfortunately, while some of these direct costs are official, others are imposed illegally by registrars in an attempt to extort more money from families, a problem that is more difficult to fight.[59] In addition, some countries also impose fees or fines if registration is delayed or late. This may discourage registration for a child once the initial period for registration has passed.

62. Children from the poorest households are twice as likely to be unregistered as those from the richest.[60] This is particularly unfortunate, given that birth registration is one of the most powerful instruments to ensure equal access for children over a broad range of services, while non-registration will only exacerbate their poverty and prolong their marginalization.[61]

E. Discrimination

63. In many countries, parents are required to present their own identity documents in order to be able to register their child. In cases where the parents themselves have not been registered or are illegal migrants, this may prevent their children from having access to their rights, perpetuating marginalization. In addition, such parents may fear approaching the authorities to register their children as reporting may lead to their own detection by the authorities.[62]

64. Some States refuse to register the children of non-citizens, in particular when they do not have permanent residence, or are refugees or asylum seekers. This is problematic, given that, in addition to the difficulties experienced by all children without a birth certificate, children of non-citizens, and in particular refugee and asylum seeker children, face particular challenges when they seek to acquire proof of nationality, and face a heightened risk of being left stateless (see para. 23-24 above).

65. Registration has important benefits for the host country, as it improves State administration and provides information about the refugee and asylum seeker population. Furthermore, in the medium to long term, a birth certificate can assist in the durable return of refugees to their areas of origin.[63] It can also facilitate repatriation, prove lineage and assist families in reclaiming property upon return.

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[58] UNICEF, *The 'Rights' Start to Life* (see footnote 56), p. 23.

[59] UNICEF *Birth Registration* (see footnote 34), p. 13.

[60] UNICEF, *Progress for Children: Achieving the MDGs with Equity*, No. 9, September 2010 (available from www.unicef.org/publications/files/Progress_for_Children-No.9_EN_081710.pdf), p. 45.

[61] UNICEF, *Birth Registration* (see footnote 34), p. 1.

[62] Contribution from Platform for International Cooperation on Undocumented Migrants.

[63] See UNHCR, Conclusion on civil registration, 17 October 2013, No.111(LXIV)-2013.

66. Lack of birth registration and therefore of official statistics can lead to an underestimation of marginalized groups and therefore diminish their visibility.[64] Non-registration may stem from a deliberate policy or simply a lack of political will to change the situation, but can also be caused by less overt obstacles, such as illiteracy and language barriers, which prevent families from gaining access to information about birth registration procedures and requirements, and its benefits.

1. Children with disabilities

67. Birth registration is recognized as a right for all children with disabilities under the Convention on the Rights of Persons with Disabilities. The Committee on the Rights of the Child has highlighted this issue, and made clear that all children should be registered at birth, including those with disabilities, without discrimination of any kind, as required under article 2 of the Convention on the Rights of the Child.[65] Unfortunately, children with disabilities are often overrepresented among those who are not registered at birth.

68. The non-registration of children with disabilities is often due to the families themselves. The reluctance of parents of children with disabilities to register them renders the children invisible to social services, health-care workers and educational facilities.[66] In its general comment No. 9, the Committee on the Rights of the Child noted that children with disabilities not registered at birth are at a greater risk of neglect, institutionalization, and even death.[67]

2. Gender discrimination

69. Although differences in rates of civil registration by sex are minimal, discrimination is seen in countries that allow only the most senior male household member to register a child's birth, or refuse to register a child at all without the presence of the father or of both parents. Such laws discriminate against mothers, and may result in children not being registered owing to the lack of the father's consent or because the child was born out of wedlock.[68] Children born out of rape, for instance, cannot be registered; thus, a woman who has survived sexual violence is revictimized. Furthermore, some gender-neutral laws, while not specifically prohibiting a mother from registering her child, make it difficult or impossible for her to do so as a result of indirect discrimination and cultural practices.[69] This is particularly the case where a child is born out of wedlock, and a single mother might be reluctant to approach the authorities out of shame and the stigma attached.

70. Discrimination against women can also be seen in countries where a woman is legally incapable of conferring her nationality to her child. In such circumstances, if the father does not acknowledge the child, there is a high risk that the child will be left stateless.[70]

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[64] UNICEF, *Birth Registration* (see footnote 34), p. 13.

[65] CRC/C/GC/7/Rev.1, para. 25.

[66] UNICEF, *Promoting the Rights of Children with Disabilities*, Innocenti Digest No. 13, 2007 (available from www.un.org/esa/socdev/unyin/documents/children_disability_rights.pdf), p. 4.

[67] CRC/C/GC/9, para. 36.

[68] Plan International, *Mother to Child: How Discrimination Prevents Women Registering the Birth of their Child*, March 2012 (available from https://plan-international.org/files/global/publications/campaigns/mother-to-child-how-discrimination-english), p. 9.

[69] Ibid., p. 6.

[70] Contribution received from University of Western Cape, South Africa, available from www.ohchr.org/EN/Issues/Children/BirthRegistration/Pages/Contributions.aspx.

F. Registration in emergency situations

71. Armed conflict, natural disasters and other emergency situations can have a significant effect on birth registration rates. In many cases, such situations lead to the disruption of civil registration officers and therefore of public services, and can exacerbate already existing obstacles, such as legal barriers, lack of financial and human resources and distance from registration centres.[71] Furthermore, the displacement of the population within and across State boundaries can cause difficulties not only for registration but also for the retrieval of documents.

72. There is also the danger that birth records may be destroyed as a result of the emergency situation, which is particularly problematic when there is no digital system is in place. In this case, it is not only present birth registrations that are threatened, but past ones as well.

VII. Examples of good practices

73. Good birth registration practices must be approached with consideration of specific contextual factors pertaining to the specific social, cultural, legal and governance structures of the country. The same practice in another country or context could have very different implications. For this reason, the examples cited below should always be seen in their local context.

74. In Mali, a citizen's guide to birth registration has been issued in five languages (French, Bamanankan, Fulfulde, Sonrai and Tamasheq). In order to ensure that those who were illiterate could benefit from the guide, more than 1,000 audio copies and 600 video copies have also been distributed.[72]

75. In Iraq, an information campaign has been launched, and 20,000 copies of a brochure on birth registration have been distributed to refugees. An information video (available fromhttp://youtu.be/ZvtSIAMXx9U) is currently being shown in all camps, UNHCR implementing partners offices and registration offices.

76. In the Sekameng area of Mafeteng District in Lesotho, World Vision met with officers from the Departments of Home Affairs and Social Welfare, leaders and community members to discuss child protection issues. As a result, a plan of action was drawn up under which local church leaders agreed to give awareness-raising sermons on birth registration at least once a month for three months, to facilitate the registration of names of children in need of birth certificates on dedicated days, and to submit the list of names for forwarding to the Department of Home Affairs.[73]

77. The Minimbah Project, established by a group of university students at the University of New England (Australia), involves a volunteer team that holds birth registration days in local primary schools in order to raise community awareness of the importance of birth registration. Children whose births have not been registered are therefore given the opportunity to register for a birth certificate.[74]

78. In Nicaragua, the Ministry of the Family, in coordination with the Cabinet for Family, Community and Life, runs a campaign whereby representatives make house-to-

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[71] Innocenti Research Centre, Birth Registration and Armed Conflict (2007) 2

[72] Plan International, *Count Every Child* (see footnote 19), p. 38.

[73] Contribution received from World Vision.

[74] Contribution from UNICEF Australia.

house visits to locate children under one year of age who are not registered, and then to register them.[75]

79. In Brunei Darussalam, "Flying Doctor Teams" use helicopters to reach remote communities and, as part of their work, to ensure registration of births of children as well as providing medical services.[76]

80. In Cambodia, a national mobile registration campaign was started on 1 October 2004. To facilitate the implementation of the campaign, Cambodia amended some provisions of the Sub-decree on Civil Registration in 2004 to remove the requirement of a court judgement for late birth registration. More than 13,000 mobile team members, including civil registration officers, were trained. As a result of the campaign, more than 90 per cent of the population acquired birth registration (some 11.7 million people have had their birth registered during 2006.[77]

81. In 2013, a new birth registration system was tested in the Mbeya region of the United Republic of Tanzania using the transmission of data to a centralized system via text messaging (SMS). The system is not dependent on any handset or operating system, and requires no Internet connectivity; all that is needed is mobile telephone coverage and a server to receive the data. Before the start of the campaign, approximately 90 per cent of children under the age of 5 in the region were not registered; three months later, only 29 per cent were not.[78]

VIII. Going forward

82. **The universal implementation of the right to birth registration for all is fundamental to the protection of children and the full implementation of their universal human rights. Registration establishes the legal existence of an individual; its absence has lifelong consequences.**

83. **Birth registration is essential for compiling vital statistics that are needed to develop policies and implement services. The demographic data provided by this act can help to keep track of the population and provide information that can identify areas of improvement. This is particularly important in such areas as child mortality, maternal health and gender equality.**

84. **One of the most basic institutional responsibilities of a Government is to provide a person with a legal identity; this is central to good governance. Functioning civil registration and vital statistics systems therefore have crucial importance in the post-2015 development agenda.**

85. **While noting that efforts have been made by States at different levels to ensure birth registration, there is still a long way to go before this right is accessible to all. In developing a permanent and sustainable civil registration and vital statistics system, in accordance with human rights standards, it is fundamental that States:**

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[75] Contribution from Defensa de los Derechos Humanos, Nicaragua.

[76] Draft discussion paper distributed to participants at the Regional Workshop of National Registrars on Best Practices in Birth Registration, co-hosted by the ASEAN Intergovernmental Commission on Human Rights (AICHR) and UNHCR in Bangkok on 7 December 2012.

[77] Good practices identified by the delegate of Cambodia at the Regional Workshop of National Registrars on Best Practices in Birth Registration (see ibid.). See also Plan International, *Count Every Child* (see footnote 19), p. 45.

[78] UNICEF, *A Passport to Protection* (see footnote 3), p. 92.

(a) Ensure that birth registration is accessible to all without discrimination of any kind, including on the basis of the child's, or the child's parents', immigration status, social origin, sex, ethnicity, language, disability or birth out of wedlock; this is essential for children and families living in an irregular migration situation, for refugees and for asylum seekers, as well as for children belonging to marginalized groups;

(b) Improve access to registration for individuals living in rural areas, including by taking advantage of the most recent advances in information technology and innovative technical solutions to improve birth registration and civil registration and vital statistics systems;

(c) Adopt simplified administrative procedures that allow flexibility in birth registration requirements to ensure that individuals are not denied registration;

(d) Review laws and administrative regulations that impose a fee on birth registration or impose penalties for late or delayed registration. Registration should be completely free of charge, and measures should be taken to ensure the registration of older children and unregistered adults, in an integrated, inclusive and protective approach;

(e). Carry out a comprehensive assessment of their existing civil registration and vital statistics system, including by monitoring and measuring its functionality and alignment with human rights standards and principles; this should be done with a view to developing a coherent strategy to achieve universal birth registration that details budgetary responsibilities, and allocates sufficient human and financial resources to the civil registration and vital statistics system. Staff should be adequately trained to apply a child-sensitive and rights-based approach, which takes account of specific vulnerabilities of children, and complies fully with the obligations of States under the Convention on the Rights of the Child and other international and regional human rights instruments;

(f) Ensure that responsibilities and accountabilities between key stakeholders working on birth registration, as well as civil registration and vital statistics, have aligned mandates and work in a coordinated manner. Actions should also be taken to remove existing obstacles to the effective administration of civil registration and vital statistics systems around which donors and development partners can align their support. Strategies aimed at improving such systems should be innovative and consider the use of technology, where appropriate. States should ensure that practitioners engage and partner with relevant stakeholders, including technology providers, to seek solutions that meet the needs of national civil registration and vital statistics systems, in accordance with international human rights standards;

(g) Participate in regional government initiatives to improve the operation of the civil registry;

(h) Consider the interoperability between birth registration and existing services and structures, such as health and education, to allow registration as close as possible to the population.

(i) Mobilize communities, in collaboration with other stakeholders, to raise awareness of the importance of birth registration, particularly among marginalized groups. The help of respected community members, such as religious leaders, village elders and locally elected councillors, should be considered, allowing communities to find their own solutions, and thus make the process more sustainable in the long term. Authorities should draw on pre-existing community structures and leaderships to

provide a sense of ownership within the community, and ensure that awareness of the benefits of birth registration is raised.

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Question of the death penalty

Report of the Secretary-General

Summary

Pursuant to Human Rights Council decision 18/117, the present report is submitted in order to update previous reports on the question of the death penalty. The report confirms that the trend towards the universal abolition of the death penalty is continuing. However, numerous concerns remain with regard to the lack of respect for international human rights norms and standards in States that still impose the death penalty. As requested in Human Rights Council resolution 22/11, the report also includes information on the human rights of children of parents sentenced to the death penalty or executed.

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I. Introduction

1. Pursuant to Human Rights Council decision 18/117, the present report is submitted to update previous reports on the question of the death penalty, including the last quinquennial report of the Secretary-General (E/2010/10 and Corr.1 and 2) and reports submitted to the Council (A/HRC/4/78, A/HRC/8/11, A/HRC/12/45, A/HRC/15/19, A/HRC/18/20, A/HRC/21/29 and A/HRC/24/18).

2. Pursuant to Human Rights Council resolution 22/11, the report also includes information on the human rights of children of parents sentenced to the death penalty or executed.

3. The report covers the period from June 2013 to May 2014 and is based on information received from States and other relevant sources, including national human rights institutions, United Nations agencies, international and regional intergovernmental bodies and non-governmental organizations. Attention is drawn to the forthcoming report of the Secretary-General to the General Assembly on a moratorium on the use of the death penalty, which will outline national and international efforts made towards the implementation of General Assembly resolution 67/176 on a moratorium.

II. Changes in law and practice

4. Changes in law include new legislation abolishing or reinstating the death penalty, restricting it or expanding its scope, as well as ratification of international and regional human rights treaties that provide for the abolition of the death penalty. Changes in practice comprise mainly non-legislative measures, including executive and judicial measures, reflecting a new approach regarding the use of the death penalty.

A. Member States that have abolished the death penalty for all crimes

5. Some 160 States have abolished or introduced a moratorium on the death penalty either in law or in practice, or have suspended executions.

B. Member States that have restricted the scope of the death penalty or are limiting its use

6. In several de facto abolitionist States, as well as in States that continue to apply the death penalty, some noticeable initiatives restricting its use were recorded during the reporting period.

7. In Antigua and Barbuda, the Offences against the Person (Amendment) Act, 2013 was amended to remove the mandatory imposition of the death penalty.[1] Bangladesh abolished the death penalty for children by enacting the Children Act 2013.[2]

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[1] The bill was adopted by the House of Representatives on 30 August 2013 and by the Senate on 12 September 2013. The final version of the Act is available from http://laws.gov.ag/acts/2013/a2013-4.pdf.

[2] Section 52 of Act No. 24 of 2013 states: "Notwithstanding anything to the contrary contained in any law, no child shall be sentenced to death, transportation or imprisonment".

8. In Benin,[3] Comoros (A/HRC/26/11, para. 10), Mongolia[4] and Suriname,[5] draft laws to remove the death penalty from national laws are currently under consideration. Viet Nam reported that it is drafting amendments to its Penal Code to reduce the number of crimes punishable by death.

9. In Sri Lanka, the Ministry of Justice appointed a special committee in October 2013 to review the Penal Code with a view to abolishing the death penalty. In June 2013, the National Assembly of Tajikistan established a working group to study public opinion on the death penalty. In China, the authorities passed a resolution affirming their intention to progressively reduce the number of crimes punishable by death. As part of its reporting to the Human Rights Council, China noted that it would continue its efforts in that regard in accordance with its economic and social development (A/HRC/25/5/Add.1, para. 186.17). Thailand reported that it intended to propose legislation to abolish the death penalty.[6]

10. In many States, a constitutional reform process provided an opportunity for discussions on the death penalty and led to proposals to abolish or restrict the use of the death penalty. For example, in Zimbabwe, a new Constitution was adopted in 2013. It provides for the death penalty only for murder committed in aggravating circumstances and prohibits its imposition on women or on men who were under 21 or over 70 years at the time of the commission of the crime. In Ghana, the Constitutional Review Implementation Committee submitted a draft bill for the amendment of the 1992 Constitution, in which it recommended replacing the death penalty with life imprisonment.[7] Sierra Leone indicated that the current review of its Constitution would present an opportunity for the examination of the question of the death penalty.[8]

11. In some States, the judiciary restricted the scope of the use of the death penalty. For instance, the High Court of Botswana declared that the mandatory death penalty (sect. 203 of the Penal Code) was unconstitutional.[9] In India, the Supreme Court issued a ruling recognizing that poverty, socioeconomic or psychic compulsions and undeserved adversities in life are some of the mitigating factors to be considered as a basis for commuting a convict's death sentence to life imprisonment.[10] The Supreme Court of India also adopted guidelines on clemency and the treatment of death row prisoners.[11] In Uganda, sentencing guidelines for courts of judicature were issued with the aim of strengthening humane, predictable and consistent sentencing. The guidelines include special rules on

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[3] Statement of the Minister of Justice, Human Rights and Legislation of Benin, delivered at the Human Rights Council on 5 March 2014.

[4] Statement of the State Minister of Justice of Mongolia, delivered at the Human Rights Council on 5 March 2014.

[5] Reported in April 2014 by the International Commission against the Death Penalty.

[6] Information provided at a seminar on moving away from the death penalty in South-East Asia, jointly organized in Bangkok in October 2013 by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Ministry of Justice of Thailand.

[7] See Ghana, Constitution Review Commission, *Report of the Constitution Review Commission: From a political to a developmental constitution*, executive summary and p. 644, para. 69 (2014). Available from www.ghana.gov.gh/images/documents/crc_report.pdf.

[8] Statement of the Minister for Foreign Affairs of Sierra Leone, delivered on 5 March 2014.

[9] High Court of Botswana, *State v. Rodney Masok*, case No. CTHFT-000008-07, judgement delivered by Justice Tshepo Motsagole on 2 October 2013.

[10] Supreme Court of India, Criminal Appellate Jurisdiction, *Sunil Damodar Gaikwad v. State of Maharashtra*, criminal appeal Nos. 165-166 of 2011, judgement issued on 10 September 2013.

[11] *Shatrughan Chauan and Anr v. Union of India and Ors*, writ petition (criminal) No. 55 of 2013, decided on 21 January 2014.

mitigation and recommend the application of the death sentence only in exceptional circumstances.[12]

C. Member States that have ratified or committed themselves to ratifying international instruments providing for the abolition of the death penalty

12. As of 30 May 2014, 81 States had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.[13]

13. During the reporting period, Bolivia (Plurinational State of), Gabon, Guinea-Bissau, El Salvador and Poland acceded to the Second Optional Protocol, and Angola signed it.

14. During the universal periodic review process of the Human Rights Council, several States, including the Central African Republic (A/HRC/25/11, paras. 104.2–104.11), the Congo (A/HRC/25/16, paras. 111.9–111.18), Cambodia (A/HRC/26/16, para. 118.1 and 118.2), Comoros (A/HRC/26/11, paras. 110.1–110.10), Côte d'Ivoire (A/HRC/27/6, para. 128.8–128.9) and Equatorial Guinea (A/HRC/27/13, para. 134.38), accepted recommendations to ratify the Second Optional Protocol.

D. Member States that have introduced moratoriums on or suspension of executions

15. The Government of Equatorial Guinea adopted presidential resolution 426 of 13 February 2014, in which it established a temporary moratorium on the application of the death penalty and expressly called for the imposition of prison terms instead of the death penalty. The Government of Pakistan decided to continue its moratorium on the use of capital punishment. The President of the United Arab Emirates ordered a general stay on executions. In the United States of America, the Governor of the State of Washington announced the introduction of a moratorium on the death penalty in February 2014.

E. Member States that have reintroduced the use of the death penalty, extended its scope or resumed executions

16. During the reporting period, the scope of the death penalty was expanded in Algeria, Brunei Darussalam, Bahrain, Bangladesh, India, Maldives, Nigeria, Papua New Guinea, the Sudan and the United States of America.

17. In Algeria, an amendment to the Penal Code was adopted in December 2013 to impose the death penalty for kidnappers of children if the victims were later found dead. Bahrain adopted a law that expanded the scope of capital punishment to include individuals responsible for bomb attacks that have caused casualties.[14] Bangladesh enacted the Children Act 2013, which allows capital punishment for the authors of acts of terrorism using children. In Nigeria, laws were adopted making kidnapping a capital crime in the Bayelsa, Edo and Delta States.

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[12] Uganda, Constitution (Sentencing guidelines for courts of judicature) (Practice) Directions, 2013.

[13] For the status of ratification, see http://treaties.un.org.

[14] Decree No. 20 of 31 July 2013.

18. Brunei Darussalam adopted a new penal code that imposes the death penalty for numerous offences. The new code also introduces stoning to death as the specific method of execution for rape, adultery, sodomy and extramarital sexual relations.

19. Papua New Guinea extended capital punishment to sorcery-related killings, aggravated rape and robbery with violence; it also approved new means of execution, including lethal injection, hanging, electrocution, firing squad and death by deprivation of oxygen.[15] The Office of the United Nations High Commissioner for Human Rights (OHCHR) expressed regrets over Papua New Guinean legislative action to resume the use of the death penalty and noted that such measures marked a significant regression in the human rights progress that Papua New Guinea had made, and contradicted the global trend towards the abolition of the death penalty.[16]

20. Maldives adopted a new regulation in April 2014 that provides for the imposition of the death penalty for intentional murder, even for individuals who are under 18. OHCHR expressed deep concern about the new regulation of Maldives to implement the death penalty, which ended the country's 60-year moratorium on the death penalty.[17]

21. In the United States of America, a law known as the Timely Justice Act was adopted in the State of Florida, which requires the Governor to sign a death warrant within 30 days of the conclusion of clemency review and to schedule execution within 180 days of the issuance of the warrant.

III. Making information on the use of the death penalty available

22. In accordance with General Assembly resolution 67/176, States should make available relevant information with regard to their use of the death penalty, including accurate data on the number of persons sentenced to death, the number of persons on death row and the number of executions.

23. During a panel discussion on the human rights of children of parents sentenced to the death penalty or executed, convened by the Human Rights Council in September 2013 at its twenty-fourth session, several States and non-governmental organizations, noted that the Human Rights Committee, the Committee against Torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had all expressed concerns regarding the lack of transparency surrounding executions. They also recalled that the human rights mechanisms viewed the failure to provide information concerning executions as amounting to a violation of international human rights law (see A/HRC/25/33, para. 25).

24. However, as noted by the Secretary-General in previous reports (A/HRC/4/78, A/HRC/8/11, A/HRC/12/45, A/HRC/15/19, A/HRC/18/20, A/HRC/21/29 and A/HRC/24/18), it is difficult to obtain up-to-date and accurate global figures on the application of the death penalty, owing to the continued lack of transparency on the part of some Governments. In Belarus, China and Viet Nam, data on the use of the death penalty is classified as a State secret, the disclosure of which constitutes a criminal offence. Furthermore, difficulties in obtaining information are compounded in countries affected by conflict, where it may not

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[15] Amnesty International, "Papua New Guinea: keep the Pacific free of death penalty". Available from www.amnesty.org.nz/our-work/end-death-penalty/papua-new-guinea.

[16] UN News Centre, "Papua New Guinea's plans to resume death penalty 'major setback' – UN", 17 May 2013. Available from www.un.org/apps/news/story.asp?NewsID=44930.

[17] UN News Centre, "Maldives should repeal new regulation providing for death penalty, says UN rights office" 29 April 2014. Available from www.un.org/apps/news/story.asp?NewsID=47680.

be possible to obtain sufficient reliable information to confirm the number of executions and other relevant details.

25. Furthermore, information regarding the actual date of executions is reportedly withheld from family members and lawyers of death row prisoners until the completion of the executions in some States, including Belarus, Indonesia, Japan, Malaysia, South Sudan and Viet Nam. The Special Rapporteur on the situation of human rights in Belarus expressed concern about the circumstances of the execution of a death row prisoner in April 2014. Reportedly, the date of his execution was not known to his family members and lawyers, who only learned about it after the sentence had already been carried out. The Special Rapporteur noted that the way the death penalty was carried out in that case amounted to inhuman treatment.[18] During the universal periodic review process of the Human Rights Council, Botswana accepted the recommendation to provide information to concerned families, so that they know in advance the date of execution of their relatives (A/HRC/23/7 and Corr.1, para. 115.60).

IV. Imposition of the death penalty

26. During the reporting period, executions were carried out in at least 22 States. Some States resumed executions[19] after a few years' suspension. In his report to the Human Rights Council (A/HRC/25/26) on the situation of human rights in the Islamic Republic of Iran, the Secretary-General expressed his concern at the sharp rise in executions in that country. He noted that the new Government continued the previous administrations' heavy reliance on the death penalty to combat crimes (see also A/HRC/23/47/Add.5). A significant increase in the number of executions was also reported in Iraq for individuals convicted under the Anti-Terrorism Law.[20] The United Nations Assistance Mission in Iraq and the United Nations High Commissioner for Human Rights have repeatedly and publicly reported that the international safeguards protecting the rights of those facing the death penalty are not implemented in the country.[21]

27. Despite its recent amendments to criminal laws and procedures, aimed at restricting the application of the death penalty, China, according to some sources, has continued to execute thousands of individuals annually.[22]

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[18] Press release, "Halt further executions – UN expert calls on Belarus for an immediate death sentence moratorium", 25 April 2014. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14537&LangID=E.

[19] Belarus, Equatorial Guinea, Indonesia, Kuwait, Malaysia, Nigeria, United Arab Emirates and Viet Nam.

[20] Act No. 13/2005, art. 4.

[21] OHCHR/United Nations Assistance Mission for Iraq Human Rights Office, "Report on Human Rights in Iraq: July-December 2012", June 2013, pp. 8–10 and 12–15; "Report on Human Rights in Iraq: January-June 2013", August 2013, pp. 6–7.

[22] Amnesty International, "Death Sentences and Executions 2013" (AI Index: ACT 50/001/2014) , p. 19. See also Hands Off Cain, "Death Penalty Worldwide 2014 Report", Rome, March 2014 (draft submitted to the Secretariat as contribution for the current report).

V. Application of safeguards guaranteeing protection of the rights of those facing the death penalty

A. Restriction of use of the death penalty to "most serious crimes"

28. In accordance with article 6, paragraph 2, of the International Covenant on Civil and Political Rights, States that have not yet abolished the death penalty should only impose it for the "most serious crimes". In international human rights jurisprudence, that term has been interpreted as allowing the death penalty to be applied only to the crime of murder or intentional killing.[23] However, the death penalty continues to be applied in some countries for crimes or acts not involving intentional killings, such as "drug-related offences", "consensual sexual acts", economic and political crimes, robbery, blasphemy, witchcraft and sorcery.

1. Use of the death penalty for "drug-related offences"

29. Drug-related offences do not meet the threshold of "most serious crimes" (see A/50/40, para. 449, and A/55/40 (Vol. I), para. 464). There is no persuasive evidence that the use of the death penalty is a greater deterrent than other methods of punishment in eradicating drug trafficking or other drug-related offences. Nevertheless, 32 countries or territories[24] continue to impose the death penalty for drug-related offences in their legislation. In some countries, drug offences account for the majority of death sentences handed down and executions carried out.

30. Human rights treaty bodies continue to address the issue of the use of the death penalty for drug crimes. For instance, the Human Rights Committee recommended that Indonesia review its legislation to ensure that crimes involving narcotics are not punishable by death (CCPR/C/IDN/CO/1, para. 10).

31. The International Narcotics Control Board discussed the imposition of the death penalty for drug-related offences at its 109th session, held in February 2014. Subsequently, in a note verbale addressed to all Member States issued on March 2014, the Board encouraged States that still imposed the death penalty for drug-related offences to abolish that punishment.

2. Use of the death penalty for consensual sexual acts between adults

32. The use of the death penalty for acts in connection with consensual sexual relations and activities do not meet the threshold of "most serious crimes." At least 10 States[25] continue to impose and carry out the death penalty in connection with actual or purported engagement in consensual sexual acts, such as "adultery" and "sodomy". Laws criminalizing actual or purported engagement by adults in consensual sexual relations, including extramarital sex and premarital sex, contravene international human rights law and standards (see, for example, A/53/40 (Vol. I), para. 119).

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[23] See E/2010/10, paras. 59–68 for further information on "most serious crimes".

[24] Bahrain, Bangladesh, Brunei Darussalam, China, Cuba, Egypt, State of Palestine (Gaza), India, Indonesia, Islamic Republic of Iran, Iraq, Kuwait, Lao People's Democratic Republic, Libya, Malaysia, Myanmar, the Democratic People's Republic of Korea, Oman, Pakistan, Qatar, the Republic of Korea, Saudi Arabia, Singapore, Sri Lanka, the Sudan, Syrian Arab Republic, Taiwan Province of China, Thailand, United Arab Emirates, United States of America, Viet Nam and Yemen.

[25] Afghanistan, Brunei Darussalam, the Islamic Republic of Iran, Mauritania, Nigeria, Pakistan, Saudi Arabia, Somalia, Sudan and Yemen.

33. In addition, although the language of such laws may be gender neutral and may not appear to directly discriminate against women, in practice, their application and enforcement often disproportionately affect women's enjoyment of their rights. Studies repeatedly demonstrate that women are more likely to be sentenced to death for such crimes, owing to deeply entrenched discriminatory societal attitudes and the biases against women suspected of adultery or of engaging in extramarital relationships among the judiciary and law enforcement officers (A/HRC/23/49/Add.5, para. 6).[26]

34. Imposition of the death penalty for offences relating to consensual adult homosexual conduct continues to be provided for in the legislation of a few States. The Human Rights Committee expressed concerns that, in Mauritania, homosexuality is a crime punishable by death. Such punishment violates the provisions of the International Covenant on Civil and Political Rights (arts. 2, 6, 17 and 26) and the Committee recommended that Mauritania decriminalize homosexuality (CCPR/C/MRT/CO/1, para. 8). While reviewing a periodic report of the Islamic Republic of Iran, the Committee on Economic, Social and Cultural Rights expressed concern over the criminalization of consensual same-sex sexual activity and the possibility that convicted persons may be subject to the death penalty (E/C.12/IRN/CO/2, para. 7).

3. Use of the death penalty for blasphemy, apostasy and religious offences

35. In some countries, conversion from Islam or the renunciation of Islam is considered apostasy and a capital crime. The death penalty has also been extended on the basis of sharia law to cases of blasphemy. According to international human rights jurisprudence, none of those crimes meets the threshold of "most serious crimes." (CCPR/C/79/Add.85, para. 8).

36. Twelve States have continued to impose the death penalty for the "crime" of apostasy: Afghanistan, the Islamic Republic of Iran, Malaysia,[27] Maldives, Mauritania, Nigeria,[28] Qatar, Saudi Arabia, Somalia, the Sudan, the United Arab Emirates and Yemen.[29] Five States continued to allow capital punishment for blasphemy: Afghanistan, Brunei Darussalam, the Islamic Republic of Iran, Pakistan, Saudi Arabia and the United Arab Emirates. In four States, armed groups were also implementing sharia punishment, including death, for "offences" to religion: Al-Shabaab in Somalia, Boko Haram and other armed groups in Nigeria, the Taliban in Afghanistan and jihadist groups in the Syrian Arab Republic.

4. Use of the death penalty for "acts of terrorism"

37. Serious concerns have been raised, including by United Nations human rights bodies and mechanisms, about the adoption and application in many States of legislation containing overly broad and vague definitions of terrorist offences. The High Commissioner for Human Rights has noted that such laws fail to comply with the principle of legality, as they do not provide reasonable notice of what actions they cover, or are so broad that they cover actions that either should not reasonably be deemed terrorist in nature or not considered to be crimes at all (A/HRC/22/26, paras. 21 and 34). In such cases, the

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[26] See also submission to OHCHR of Women Living under the Muslim Laws and the International Solidarity Network dated 15 December 2013.

[27] Despite contradicting federal law, the State governments of Kelantan and Terengganu passed laws in 1993 and 2002, respectively, making apostasy a capital offence.

[28] In 12 northern States.

[29] See International Humanist and Ethical Union, "Freedom of thought 2013: A global report on the rights, legal status, and discrimination against humanists, atheists, and the non-religious", 2014.

application of the death penalty remains a serious concern, in particular where such acts do not meet the threshold of "most serious crimes", and may amount to violations of article 6 of the International Covenant on Civil and Political Rights.

38. Executions relating to acts of terrorism or crimes of a political nature were carried out in Bangladesh, Belarus, China, the Islamic Republic of Iran, Iraq, India, Somalia and the Sudan, and possibly in other countries. Furthermore, hundreds of death sentences were handed down, albeit not carried out, in terrorism-related cases in Algeria, Bangladesh, Egypt, Pakistan, Lebanon and Libya.

39. Concerns have been raised over the adoption of new counter-terrorism legislation or the amendment of existing laws in Bahrain, Bangladesh, Nigeria and the Syrian Arab Republic which prescribe the death penalty for overly broad or vaguely defined "terrorist" activities.

5. Mandatory use of the death penalty

40. According to the jurisprudence of human rights mechanisms, the mandatory use of the death penalty is not compatible with the limitation of capital punishment to the "most serious crimes".[30] Nevertheless, the Islamic Republic of Iran, Kenya, Malaysia, Nigeria, Pakistan and Singapore continue to impose mandatory death sentences.[31]

41. The Human Rights Committee continues to address the issue in its individual communications. In one case involving the imposition of a mandatory death sentence for acts of murder in Ghana, the Committee referred to its jurisprudence that the automatic and mandatory imposition of the death penalty constituted arbitrary deprivation of life, in violation of article 6, paragraph 1, of the International Covenant on Civil and Political Rights. Laws that impose the death penalty without any possibility of the defendant's personal circumstances or the circumstances of the particular offence being taken into account[32] constitute violations of the right to life under the Covenant.[33]

42. During its universal periodic review, Barbados accepted the recommendation that it eliminate the mandatory death penalty (A/HRC/23/11/Add.1, para. 18). Uganda proposed the Law Revision (Penalties in Criminal Matters) Miscellaneous Amendment Bill 2013 to repeal mandatory death penalty provisions.

B. Fair trial guarantees

43. The imposition of a death sentence upon the conclusion of a trial in which the provisions of article 14 of the International Covenant on Civil and Political Rights have not been respected constitutes a violation of the right to life.[34] Furthermore, forcing an

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[30] See E/2010/10 for a detailed discussion on the relevant human rights jurisprudence.

[31] Amnesty International, op. cit., p. 11.

[32] See, inter alia, communications No. 1520/2006, *Mwamba v. Zambia*, Views adopted on 10 March 2010, para. 6.3; No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 October 2005, para. 7.4; No. 845/1998, *Kennedy v. Trinidad and Tobago*, Views adopted on 26 March 2002, para. 7.3; and No. 806/1998, *Thompson v. Saint Vincent and the Grenadines*, Views adopted on 18 October 2000, para. 8.2.

[33] See communication No. 2177/2012, *Johnson v. Ghana*, Views adopted on 27 March 2014.

[34] Human Rights Committee, communications No. 1044/2002, *Shakurova v. Tajikistan*, Views adopted on 17 March 2006; No. 915/200, *Ruzmetov v. Uzbekistan*, Views adopted on 30 March 2006; No. 913/2000, *Chan v. Guyana*, Views adopted on 31 October 2005; No. 1167/2003, *Rayos v. Philippines*, Views adopted on 27 July 2004. See also its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

individual to make or sign, under duress, a confession admitting guilt violates both article 7 (prohibiting torture and inhuman, cruel or degrading treatment) and article 14, paragraph 3 (g) (prohibiting compulsion to testify against oneself or confess guilt) of the Covenant.[35]

44. Bahrain, the Democratic Republic of the Congo, Egypt, Iraq, Qatar, the Sudan and the Syrian Arab Republic provided information regarding the legal guarantees and safeguards provided in their respective jurisdictions. Such guarantees and safeguards include the right to public trial, the right to legal presentation and counsel, including the provision of a counsel financed by the State, respect for the principle of presumption of innocence, the right to appeal and freedom from torture.[36]

45. In some States where individuals were sentenced to death or executed, however, the death penalty was imposed after proceedings that may not meet international fair trial standards. In many cases, sentences were based on "confessions" that were allegedly extracted through torture or other ill-treatment. Other prevalent global issues include failure to supply qualified interpreters for court hearings, failure to provide a written record of proceedings, inconsistent and unfair sentencing practices, failure to accept or consider mitigating factors, the absence of a meaningful legal aid framework resulting in indigent defendants being effectively deprived of legal representation and the imposition of the death penalty by military and special courts and tribunals.

46. United Nations human rights mechanisms have continued to express concern over the lack of fair trial in death penalty cases in a number of States. For instance, in November 2013, the High Commissioner for Human Rights urged the Government of Bangladesh not to implement death sentences in cases before the International Crimes Tribunal, particularly given concerns over the fairness of the trials. She emphasized that the tribunal should ensure the highest standards of proceedings, if it was to reinforce the rule of law in Bangladesh and the fight against impunity for the mass atrocities committed in 1971. Subsequently, two Human Rights Council special procedure mandate holders expressed similar concerns that the International Crimes Tribunal of Bangladesh did not uphold the most stringent fair trial and due process guarantees.[37]

47. The High Commissioner for Human Rights also expressed concern about the imposition of the death penalty by courts in the Gaza Strip in the State of Palestine. She emphasized that the death penalty could only be imposed after a fair trial, which is currently not legally or practically possible in Gaza. She also expressed serious concern about ill-treatment and torture during the interrogation of persons later sentenced to death, and urged the authorities in the Gaza Strip not to carry out planned executions and to implement a moratorium.[38]

48. With regard to the executions that took place in Somalia in March 2014, OHCHR expressed concerns that the hasty judicial process, in which there were only nine days between the alleged killings and the executions, had deprived suspects of full fair trial guarantees, including the right to legal representation and the right to appeal.

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[35] Human Rights Committee, general comment No. 32.

[36] Submissions from those States are available from the Secretariat for consultation.

[37] "UN human rights experts urge Bangladesh to stop the execution of Abdul Quader Mollah", press release, 9 December 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14077&LangID=E.

[38] "UN human rights chief Navi Pillay urges Hamas to halt Gaza executions", press release, 14 August 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13628&LangID=E.

49. The Special Rapporteur on extrajudicial, summary or arbitrary executions and other Human Rights Council special procedure mandate holders also urged several States, including Belarus,[39] Egypt,[40] the Democratic People's Republic of Korea,[41] the Islamic Republic of Iran[42] and Papua New Guinea[43] to maintain stringent respect for due process and fair trial guarantees in death penalty cases.

Arbitrary use of the death penalty in mass trials

50. During the reporting period, a new phenomenon of sentencing large groups of individuals in mass trials emerged and led to major concerns that such mass trials violate the international human rights standards of fair trial guarantees and other safeguards. In Viet Nam, 33 people were sentenced to death for drug trafficking in a mass trial, reportedly without any adequate legal representation. In Bangladesh, a special court set up to prosecute crimes committed during a mutiny in Dhaka in 2009 sentenced 152 paramilitary personnel to death in November 2013. A trial court in Egypt imposed death sentences on more than 1,000 people in two mass trials for the alleged killing of a police officer and other violent activities committed during the country's 2013 political crisis.

51. Those trials were marred by procedural irregularities, including lack of adequate and timely access to lawyers, and instances of trials in absentia. In many cases, reports indicated that a number of suspects who were detained in custody died after they were tortured. The courts that conducted the mass trials also admitted evidence obtained under torture. Furthermore, the exact charges against each defendant were not clear, given that, in many cases, they were not individually read out in court. The courts also did not adhere to the presumption of innocence. Pursuant to general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial of the Human Rights Committee, the presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt and requires that persons accused of a criminal act must be treated in accordance with that principle.

52. The Secretary-General, the High Commissioner for Human Rights and Human Rights Council special procedure mandate holders expressed serious alarm concerning the imposition of the death penalty during those mass trials. In her statement regarding the mass trial in Bangladesh for the alleged perpetrators of a mutiny in 2009, the High

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[39] "Belarus / Death penalty: UN expert calls to stop executions after recent court rulings", press release, 9 October 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13840&LangID=E.

[40] "Egypt: Mass death sentences – a mockery of justice", press release, 31 March 2014. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14457&LangID=E.

[41] "'High-profile execution in North Korea is just one among many other cases,' UN experts warn", press release, 18 December 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14117&LangID=E.

[42] "'Stop the executions' – UN rights experts alarmed at the sharp increase in hangings in Iran", press release, 22 January 2014. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14190&LangID=E. "UN Expert calls on Iran to halt execution of Iranian woman expected to take place tomorrow", press release, 14 April 2014. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14509&LangID=E.

[43] Press statement, "Preliminary observations on the official visit to Papua New Guinea by Christof Heyns, Special Rapporteur on extrajudicial, summary or arbitrary executions, 3–14 March 2014", 14 March 2014, Port Moresby.

Commissioner stated that the crimes committed during the mutiny were utterly reprehensible and heinous, but that conducting mass trials of hundreds of individuals, torturing suspects in custody and sentencing them to death after trials that failed to meet the most fundamental standards of due process did not achieve justice.[44]

53. With regard to the mass sentencing in Egypt in March 2013, the High Commissioner and special procedure mandate holders expressed deep concern about numerous procedural irregularities reported during the proceedings.[45] The Secretary-General stated that the verdicts clearly did not meet basic standards of fair trial, particularly those that imposed the death penalty, and could undermine the prospects for long-term stability in Egypt.[46] Furthermore, in a joint statement, a group of human rights experts from the African Commission on Human and Peoples' Rights and the United Nations also expressed concerns about the mass trial in Egypt, and stated that such a "mockery of justice" would undermine the justice and reconciliation process in the country.[47]

C. Access to consular services for non-citizens

54. Access to consular services is an important aspect of the protection of non-citizens facing the death penalty abroad. Under international law, the denial of the right to consular notification leads to the violation of due process and the execution of a foreign national deprived of his or her right to consular services constitutes an arbitrary deprivation of life, in contravention of articles 6 and 14 of the International Covenant on Civil and Political Rights.

55. Reportedly, non-citizens, including migrant workers, remained disproportionately affected by the death penalty in the Asian and Middle Eastern regions. For instance, at least 149 people, including many non-citizens, convicted of drug-related offences are reportedly on death row in Indonesia; 247 Indonesians are on death row in other countries. In Malaysia, death sentences have been issued against at least 37 foreign nationals, mostly for drug offences. Saudi Arabia executed at least 37 non-citizens. The death penalty was disproportionately used against migrant workers from Asia and Africa. Some 125 Filipino migrant workers are on death row abroad. In the United Arab Emirates, about half of the death sentences pronounced during the reporting period were imposed on non-citizens, who make up over 80 per cent of the population. Sixty Mexicans are on death row in the United States.[48]

56. Several States have established specific programmes to support their nationals who are sentenced to the death penalty while abroad. For instance, the Ministry of Foreign Affairs of Indonesia established the Legal Aid and Protection of Indonesians Overseas Unit,

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[44] "Pillay alarmed at sentencing of 152 paramilitary personnel to death in Bangladesh", press release, 6 November 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13953&LangID=E.

[45] "Egypt: Mass death sentences".

[46] Statement by the Secretary-General, "Secretary-General, alarmed by mass death sentence, youth movement ban in Egypt, stresses security implications for entire region", 28 April 2014 (SG/SM/15803-AFR/2873). Available from www.un.org/News/Press/docs/2014/sgsm15803.doc.htm.

[47] "Egypt: justice and reconciliation increasingly failing after second wave of mass death sentences", press release, 15 May 2014. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14596&LangID=E.

[48] Amnesty International, op. cit., pp. 18, 23, 24, 32, 39. See also statement of Mexico delivered at a side event of the Human Rights Council on 11 March 2014.

which has intervened in 247 cases of Indonesian nationals sentenced to death abroad.[49] The Office of the Undersecretary for Migrant Workers' Affairs of the Department of Foreign Affairs of the Philippines provided legal assistance to Filipino migrant workers facing death sentences abroad.[50] The Ministry of Foreign Affairs of Mexico established a legal support programme, known as the Mexican Capital Legal Assistance Program, for Mexicans facing the death penalty in the United States of America. Between its inception in 2000 and February 2014, the programme intervened in 1,001 cases of first-degree murder and the interventions led to the prevention or reversal of the death penalty in 878 cases.[51]

57. In the United States of America, in January 2014, the State of Texas executed Edgar Arias Tamayo, one of the 51 Mexican nationals subject to the International Court of Justice *Avena* decision.[52] Following the execution, the United States Department of State issued a statement regretting the decision of the State of Texas to proceed with the execution without review and reconsideration in accordance with the *Avena* decision, and noted that the execution illustrated the critical importance for the Congress to pass the Consular Notification Compliance Act, which would provide an additional mechanism for the United States to meet its international obligations.[53] Despite repeated national and international calls to suspend further executions, another Mexican national was executed in the State of Texas in April 2014, in violation of the *Avena* decision.[54]

VI. Use of the death penalty against children, persons with mental or intellectual disabilities and other vulnerable groups

A. Children

58. In September 2013, reaffirming the absolute prohibition in international human rights law of the execution of persons for crimes committed before they were 18 years of age, the Human Rights Council adopted resolution 24/12 in which it urged States to ensure that, under their legislation and practice, neither capital punishment nor life imprisonment were imposed for offences committed by persons under 18.

59. The legislation of 14 States allows the application of the death penalty to children. They are India (Jammu and Kashmir), the Islamic Republic of Iran, the Lao People's Democratic Republic, Malaysia, Maldives, Mauritania, Nigeria, Pakistan, Qatar, Saudi Arabia, Somalia, Tonga, the United Arab Emirates and Yemen. During the reporting

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[49] Amie Fenia Arimbi, "247 Indonesians abroad under threat of death penalty", *Antara News*, 20 September 2013. Available from www.antaranews.com/en/news/90806/247-indonesians-abroad-under-threat-of-death-penalty.

[50] See joint submission of Migrante International and the Asia Pacific Mission for Migrants to the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families at its twentieth session, April 2014.

[51] Statement of the Ministry of Foreign Affairs of Mexico, 11 March 2014, Geneva.

[52] In the *Avena* decision, the International Court of Justice found that the United States had failed to provide consular notification and access to 51 Mexican nationals, as required under the Vienna Convention on Consular Relations.

[53] United States, Department of State, "Execution of Mexican national Edgar Arias Tamayo", 23 January 2014. Available from www.state.gov/r/pa/prs/ps/2014/01/220546.htm.

[54] United States, Mission to the Organization for Security and Co-operation in Europe, "Response to European Union on execution of Mexican national". Available from iipdigital.usembassy.gov/st/english/texttrans/2014/04/20140416297946.html #ixzz31WP1NQWE.

period, at least 4 of the 14 States, namely the Islamic Republic of Iran, Saudi Arabia, the State of Palestine (Gaza) and Yemen, executed children.

60. The United Nations Children's Fund (UNICEF) estimated that, in the Islamic Republic of Iran, over 160 persons, who allegedly committed crimes before the age of 18, face the risk of execution. The adoption of the revised penal code in 2013 in the country (specifically its child-related provisions that prohibit the application of the death penalty to children in certain cases) created a more enabling environment for the implementation of juvenile justice standards for children in conflict with the law. In partnership with the judiciary, UNICEF supported the implementation of child-related provisions of the revised penal code. It noted, however, that it was still too early to assess the extent to which the revised penal code contributed to reducing the number of capital sentences issued in cases involving juveniles. It recommended that the Government, prior to its adoption of the new penal code, ensure a special review of the cases of those children who had been sentenced to death.

61. Saudi Arabia reportedly executed two individuals for crimes they had committed before the age of 18. Saudi Arabia justifies the execution of juveniles on the ground that their childhoods end when they reach puberty, according to the concept of *bulugh* under sharia. It also carried out *qisas* (retaliatory punishment). UNICEF reported that the Saudi Shura Council had recently approved a law on the protection of children from abuse which defines children as individuals under the age 18, in accordance with the provisions of the Convention on the Rights of the Child. The law is currently awaiting the approval of the Head of State.

B. Persons with mental or intellectual disabilities

62. In accordance with international human rights standards, the death penalty should not be imposed on persons with mental or intellectual disabilities.[55] The judiciary in several States took the initiative of addressing the issue of the use of the death penalty against persons with mental or intellectual disabilities. For instance, the Supreme Court of India commuted the death sentences of two individuals to life imprisonment on the ground of mental illness. It also ruled that all death row prisoners should have regular mental health checks and appropriate medical care.[56] In Japan, in March 2014, a district court released Iwao Hakamada, who had been on death row since 1968 and developed mental illness as a result of the decades he had spent in isolation.

63. Some States, however, reportedly continued to execute persons with mental and intellectual disabilities. In the United States of America, after the Supreme Court rejected a stay of execution, the State of Florida executed an individual in August 2013 despite his decades-long history of mental illness.[57] In April 2014, the State of Texas executed Ramiro Hernández Llanas, a Mexican national whose IQ level fell within the parameters of intellectual disability. Despite precautionary measures issued by the Inter-American Commission on Human Rights in Mr. Hernández's case, the United States failed to preserve his life pending a petition before the Inter-American Court of Human Rights, in violation of its international legal obligations derived from the Charter of the Organization

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[55] See E/2010/10 for detailed discussion on the relevant international standards.

[56] *Shatrughan Chauan and Anr v. Union of India and Ors*, writ petition (criminal) No. 55 of 2013, decided on 21 January 2014.

[57] Florida Department of Corrections *John Ferguson v. Secretary*, No. 13-5507.

of American States and the American Declaration of the Rights and Duties of Man.[58] The recent execution of persons with intellectual and mental disabilities in the country raised concerns about the implementation of the judgment of the Supreme Court in the case of *Atkins v. Virginia* (case No. 536 U.S. 304), which prohibits the execution of such individuals.

64. In May 2014, the United States Supreme Court issued another decision in *Hall v. Florida* (case No. 572 U. S. ____ (2014)) with regard to the use of the death penalty against persons with mental and intellectual disabilities. In that decision, the Court further elaborated the notion of the *Atkins* decision and held that it was unconstitutional to refuse to take into account mental factors other than an IQ test. It stated that the death penalty was the gravest sentence society might impose. Persons facing that most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution.

VII. Human rights of children of parents sentenced to the death penalty or executed

65. In September 2013, the Human Rights Council held a panel discussion on the human rights of children of parents sentenced to the death penalty or executed. The panellists highlighted the devastating impact on children, including long-term damage to their mental health, when a parent is accused of a capital crime. They highlighted that the emotional trauma caused at the time of arrest continued even decades after the execution or the parent's release. The panel discussion addressed various areas requiring the adoption of measures: the best interests of the child and the provision to children of parents facing the death penalty of care, assistance, information and access to their parents on death row.[59]

66. The situation and the needs of those children have been increasingly taken into consideration by several United Nations bodies, including the Committee on the Rights of the Child, the Human Rights Council in its universal periodic review and the General Assembly. In September 2013, in concluding observations adopted following the review of a periodic report of Kuwait, the Committee on the Rights of the Child recommended that Kuwait assess and fully take into account the best interests of the child in judicial proceedings where parents are involved and when sentencing parents to death (CRC/C/KWT/CO/2, paras. 31 and 32). During the review of a periodic report of China, the Committee asked the Chinese delegation whether courts took into account the best interests of the child when imposing the death penalty on a parent (CRC/C/SR.1833, para. 21). In its list of issues for India, the Committee asked the Government to provide specific details on measures taken to guarantee the right of the child to have his or her interests taken as a primary consideration for children whose parents are involved in criminal proceedings, specifically in sentencing and cases involving capital punishment (CRC/C/IND/Q/3-4, para. 4). Subsequently, in its periodic report, India informed the Committee of the adoption by the Government of Rajasthan of a scheme to provide alternative care to children without parental care and support and that children whose parents received life imprisonments or death sentences were among those included in that scheme (CRC/C/IND/3-4, sect. 5, para. 35).

67. In January 2014, at its sixty-fifth session, in addition to asking questions relating to the sentencing and execution of child offenders (CRC/C/SR.1849, paras. 16, 22, 24, 26–32 and 38), the Committee on the Rights of the Child asked Yemen what support was provided

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[58] Press release, "IACHR condemns execution of Ramiro Hernandez Llanas in the United States", 11 April 2014. Available from www.oas.org/en/iachr/media_center/PReleases/2014/036.asp.

[59] See A/HRC/25/33 for the summary report of the panel discussion.

to children of death row inmates and what measures were taken to ensure that they did not face discrimination as a result of their parents' situation (ibid., para. 38). At the same session, the Committee asked the Congo whether the judicial system made any provisions for children whose parents were on death row or serving lengthy prison sentences; what protection, if any, was afforded to them; and how their best interest was translated in that context (CRC/C/SR.1847, para. 58).

68. At the seventeenth and eighteenth sessions of the Working Group of the Universal Periodic Review, Member States sent written questions relating to the situation of children of parents under death row or executed to Afghanistan, China, Malaysia, Nigeria, Saudi Arabia, Viet Nam and Yemen.[60] Those written questions addressed issues such as: the number of individuals on death row; the number of individuals on death row with children and the number of affected children; the number of death sentences and executions since the previous universal periodic review and how many affected individuals have/had children; the support provided to those children; whether families, including children, have the right to visit or, if unable to visit, to communicate in other ways; whether the visiting/communication regime is the same as for other prisoners; whether family members have the right to be informed of an execution before it takes place and, if so, how are they informed and what is the notice period; and whether children and other family members of a person sentenced to death have the right to a final meeting before an execution is carried out. At the seventeenth session of the Working Group, Croatia recommended that Malaysia ensure that children without parental care due to parental incarceration or execution are provided for, including with support for physical and mental health (A/HRC/25/10, para. 146.185).[61]

69. In its resolution 68/147 on the rights of the child, adopted without a vote on 18 December 2013, the General Assembly acknowledged that a parent's deprivation of liberty, sentencing to death or life imprisonment had a serious impact on children's development, and urged States, in the framework of their national child protection efforts, to provide the assistance and support those children may require (para. 57).

70. Children of parents facing the death penalty abroad are also confronted with additional challenges: they require specific practical, emotional and/or financial assistance. Children who are in the same country as the sentenced parents may be imprisoned with their parent and need help to be repatriated to the country of origin or to stay near the parent, depending on factors such as the children's age and the availability of other suitable persons to take care of them.

71. In a statement delivered in March 2014, the Special Representative of the Secretary-General on Violence against Children noted that the loss of a parent is traumatic and irreversible but, unlike a natural death, when it is officially performed by the authorities of a country, it becomes particularly confusing and frightening for a child. Children find it hard to explain their situation, and are increasingly tempted to deny it and hide their feelings. In that regard, the Special Representative underscored that the sentencing of a parent to the death penalty compromises the enjoyment of a wide spectrum of children's rights. She also mentioned that there is enough evidence to recognize the urgency of ensuring a protective environment for children of parents sentenced to death or executed;

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[60] The questions can be found on the relevant universal periodic review country pages: www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx.

[61] Malaysia undertook to respond to the recommendations no later than the twenty-fifth session of the Council, in March 2014.

preventing their discrimination and stigma, and providing them with the services and the recovery and reintegration measures they require.[62]

VIII. Conclusions

72. **The trend towards the universal abolition of the death penalty is continuing. However, numerous concerns remain with regard to the lack of respect for relevant international human rights norms and standards in States where the death penalty is still imposed. Until the death penalty is fully abolished, retentionist States must ensure that the death penalty is imposed only for those crimes that involve intentional killing. The death penalty should not be imposed for "drug offences", "consensual adult sex", "blasphemy" or any other acts that do not meet the threshold of "most serious crimes". States should abolish the mandatory death penalty, where it still exists. States must also ensure that the highest level of compliance with fair trial and other international human rights norms and standards are met in all death penalty cases.**

73. **The lack of data on the number of executions or individuals on death row is a serious impediment to debate on the abolition of capital punishment. It will also be important, for the effectiveness and transparency of such a debate, to ensure that the public has access to balanced information, including accurate information and statistics on criminality and the various effective ways to combat it, without resorting to capital punishment.**

74. **States that still use the death penalty on persons who committed crimes before the age of 18 must stop that practice. When the death penalty is abolished, they must avoid sentencing children to life imprisonment as an alternative punishment. States must take account of article 37 of the Convention on the Rights of the Child, which explicitly requires that deprivation of liberty be used only as a last resort and for the shortest appropriate period of time.**

75. **The effects of the death penalty system in its entirety, including the social, economic and psychological impact on the children and family members of those executed or under a death sentence, must be further examined. States that still use the death penalty should recognize the urgency of ensuring a protective environment for the children of parents sentenced to death or executed, preventing discrimination and stigma, and providing them with assistance for their recovery and reintegration.**

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[62] Statement delivered at a side event on "Children of parents sentenced to the death penalty or executed: developments, good practices and next steps" organized by Belgium, Mexico, Montenegro and Norway, in collaboration with the Quaker United Nations Office during the twenty-fifth session of the Human Rights Council, in March 2014.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Summary of the high-level panel discussion dedicated to the sixty-fifth anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to decision 22/22 of the Human Rights Council. It provides a summary of the high-level panel discussion dedicated to the sixty-fifth anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide.

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I. Introduction

1. Pursuant to its resolution 22/22, the Human Rights Council held a high-level panel discussion on 7 March 2014, at its twenty-fifth session, dedicated to the sixty-fifth anniversary of the Convention on the Prevention and Punishment of the Crime of Genocide.

2. Baudelaire Ndong Ella, President of the Human Rights Council, chaired the panel discussion. Navi Pillay, United Nations High Commissioner for Human Rights, and Eduard Nalbandian, Minister of Foreign Affairs of Armenia, delivered opening statements. The panellists were Esther Mujawayo, a sociologist, author and Rwanda genocide survivor; Adama Dieng, Special Adviser on the Prevention of Genocide; and Jonathan Sisson, Senior Adviser, Task Force for Dealing with the Past (and Prevention of Atrocities), Swiss Federal Department of Foreign Affairs.[1]

3. The present document was prepared pursuant to resolution 22/22 of the Human Rights Council, under which the Office of the United Nations High Commissioner for Human Rights (OHCHR) is requested to prepare a summary report on the panel discussion.

II. Opening statements

4. In her opening remarks, the High Commissioner for Human Rights stated that the Convention on the Prevention and Punishment of the Crime of Genocide was the first human rights treaty adopted by the United Nations, in 1948. In order to ensure that it was fully and universally implemented, she encouraged those States that had not yet done so to become parties to that important instrument. She emphasized that the prohibition of genocide was not an ordinary rule of international law but rather *jus cogens* – a fundamental, overriding principle. Every State had to ensure that its agencies and officials did not commit acts of genocide. Furthermore, States were under the legal obligation to take all measures within their powers to prevent genocide "wherever they may be acting or may be able to act". That included using all the influence that States could deploy in order to contribute to the prevention of acts of genocide anywhere in the world.

5. With regard to the root causes of genocide, the High Commissioner stressed that genocide and other mass atrocities were never unleashed without warning. They were the culmination of a long period of violations of human rights – whether these be civil, cultural, economic, political or social – that were ignored, giving rise to social divisions, institutional failures and clearly identifiable patterns of systematic discrimination. Referring to her experience as a judge, and then as President of the International Criminal Tribunal for Rwanda for several years, the High Commissioner said that she had heard witnesses and victims testify that direct and public incitement to commit genocide against Tutsis had permeated gradually through society and had led to the perpetration of other acts of genocide. The process was akin to seeing a pool of petrol forming drop by drop, until a point was reached when a flash of violence set the whole country alight.

6. The High Commissioner stated that discrimination prepared the ground for violence and persecution, the dehumanization of entire communities, and ultimately genocide. The Committee on the Elimination of Racial Discrimination had identified key factors that may lead to genocide and thus required an immediate response. These included systematic and

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[1] Owing to unforeseen circumstances, two panellists (Claudia Paz y Paz, Attorney-General of Guatemala, and Youk Chhang, Director, Documentation Centre of Cambodia) were unable to take part in the panel discussion, but contributed via their submission of written papers.

official denial of the existence of distinct groups, biased accounts of historical events serving to demonize certain groups, and political leaders who fostered tensions by espousing exclusionary ideologies, justifying discrimination, or encouraging violence.

7. With regard to the role of human rights mechanisms and United Nations entities, the High Commissioner emphasized that the human rights treaty bodies, and the Human Rights Council via the universal periodic review and the special procedures mandate holders, played a major role in preventing genocide. They may observe signs indicating a percolation of discrimination and violence into society, and those signs should focus the attention and action of the international community. The High Commissioner stressed that OHCHR had not shied away from speaking out when there was a risk of genocide or mass atrocities. In that connection, she welcomed the close cooperation between OHCHR and the Office on Genocide Prevention and the Responsibility to Protect. She also noted that the prevention of genocide and other mass atrocities concerned all United Nations entities. In response to the Internal Review Panel on United Nations Action in Sri Lanka, the Secretary-General had adopted the Rights up Front Action Plan to ensure that United Nations activities were underpinned by a robust system for the timely gathering and analysis of information on threats to populations. The High Commissioner firmly believed that the full implementation of the plan would assist the international community in its solemn duty to prevent genocide and other mass atrocity crimes.

8. The High Commissioner further noted that the Genocide Convention required States to ensure that perpetrators did not enjoy impunity. Accountability was vital in ensuring the rights of victims to an effective remedy. Only renewal of the rule of law and of accountability could reshape society after such profound trauma and reinstate human rights and the principles of equality and dignity. In that regard, she referred to the achievements of several international and hybrid tribunals created over the past 20 years in ensuring accountability and deterrence, including the International Criminal Court. The High Commissioner emphasized that the International Criminal Court could only exercise its role as a powerful deterrent if it was backed by a sustained commitment from all stakeholders, including the full cooperation of all States. A successful International Criminal Court would be one that saw universal acceptance of its jurisdiction, without limits to its reach and exception. To date, 122 States had ratified the Rome Statute. She urged all remaining States to become parties.

9. The High Commissioner also noted that international justice was the last resort. International law required States to take appropriate measures within their domestic legal systems to investigate, prosecute and punish perpetrators of genocide. In that regard, she highlighted some challenges encountered by States, including the lack of a clear political commitment to enforce accountability and the lack of respect for relevant human rights norms and standards. With regard to the judicial system, challenges included a lack of independence of the judiciary, the absence of due process and fair trials, and inadequate judicial capacity to investigate and prosecute crimes. In particular, the perpetrators included official entities and individuals who had been, or may remain, politically powerful. Finally, the High Commissioner pointed out the need for adequate legislation and programmes to protect witnesses and victims. It was important to ensure that victims had the right to seek reparation for genocide and other heinous crimes, as provided by the Rome Statute of the International Criminal Court.

10. In her conclusion, the High Commissioner reiterated that all too often, genocide was preceded by repeated warning signs that did not receive a strong and early international response. She urged the international community to stay alert to the warning signs so that, if detected, they could be responded to swiftly and in a common front by all stakeholders. Timely responses to warning signs prevented genocide, and protected democracy, the rule of law and human rights.

11. In his statement, Eduard Nalbandian, Minister of Foreign Affairs of Armenia, said that Armenia felt a strong moral responsibility to add its contribution to international efforts for the prevention of crimes against humanity. In that context, he discussed Armenia's initiatives on the prevention of genocide, including its sponsoring of the Human Rights Council's resolution on genocide prevention. He also highlighted the work of the Human Rights Council and other United Nations bodies that had played an important role in the Genocide Convention. He praised the personal involvement of the Secretary-General of the United Nations, who had provided guidance on how to improve ongoing cooperation, and the valuable contribution of the Special Adviser on the Prevention of Genocide.

12. Mr. Nalbandian noted that despite the fact that the Genocide Convention had been adopted in 1948, genocides and crimes against humanity had still been committed over the ensuing decades, including in recent years and in different parts of the world. He emphasized that the international community needed not only debates, resolutions, declarations and conventions, but also effective mechanisms and action to prevent the recurrence of genocide. Genocide prevention required the development both of enforcement measures and of preventive measures. Mr. Nalbandian further noted that genocide was a complex phenomenon that did not follow a single model. An effective prevention strategy needed to be based on a thorough analysis of all modern genocide cases and a full understanding of the history and causes of past genocides. The international community must learn from past failures and be open to new ideas. The perpetrators of genocide should have no doubt that they would be held responsible. He also referred to the efforts of Raphael Lemkin who, when coining the term "genocide", made reference to the policy of mass extermination that had been perpetrated against the Armenians.

13. Referring to the preventive measures envisaged in Human Rights Council resolution 22/22, Mr. Nalbandian noted that genocide prevention should include three pillars: early warning, human rights protection, and public campaigns of education and awareness-building. He emphasized that the international community should aim to prevent genocide as early as possible. Although both the United Nations and regional organizations had made substantial progress in improving early warning and assessment systems over the past decades, he urged the international community to ensure that those advances continued. Mr. Nalbandian stressed that early identification of risks of genocide and early warning would not be effective unless they were followed by concrete forms of deterrence. He stated that the prevention of genocide was part of international mechanisms for human rights protection. Genocide was an unthinkable crime for a society founded on the protection of human rights, mutual respect, tolerance and non-violence. Mr. Nalbandian also highlighted the importance of public education and remembrance, in order for future generations to know the history of past tragedies. The acknowledgement and condemnation of past genocides acted as a powerful deterrent against recurrences of genocide.

14. Mr. Nalbandian stressed that denial of genocide, along with impunity, paved the way for the occurrence of crimes against humanity. In the light of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, of 1968, he recommended that the international community stand together in the recognition, condemnation and punishment of past genocides and in its efforts to prevent future genocides. The days of remembrance honouring the victims of genocides should be days of mourning for all, including for the descendants of victims and for the descendants of perpetrators. In honouring the victims, the goal should be to foster cooperation and reconciliation.

15. Mr. Nalbandian also stated that the civilized world resolutely rejected incitement to hatred, racism, intolerance, genocide (including its denial), and crimes against humanity. The prevailing opinion of international genocide scholars was that denial itself constituted a continuation of genocide. In his conclusion, he said that the effectiveness of each treaty,

including the Genocide Convention, should be evaluated on the basis of its implementation. Therefore, in order to ensure maximum effectiveness of the Genocide Convention, he called upon States that had not yet acceded to it to sign and ratify the Convention.

III. Contributions of the panel

16. Esther Mujawayo began her remarks by observing that April 2014 marked 20 years since the Rwandan genocide, which had started on an Easter Sunday. In a moving testimony, Ms. Mujawayo recalled the events leading up to the genocide, saying that tensions were felt months before it occurred, with radio stations playing catchy songs that called for the extermination of the Tutsis. On 7 April 1994, the killings of the Tutsis started on a mass scale and every place was dangerous.

17. Ms. Mujawayo held up a photo of her extended family to show the audience that everyone in the photo had been killed – except for herself and her niece. She asked the audience whether it was really possible for anyone to survive if that person had already lost everyone close to her. Ms. Mujawayo said that she had lived in a vacuum since, because although she had survived, she no longer felt alive. She said that she suffered from survivor's guilt, made worse because she had not been able to bury the bodies of her loved ones. She added that the genocide had led to the killing of men, women and children, and indicated a loss of all societal values. Even churches and other traditional sanctuaries had become slaughterhouses. To have been able to kill one million people in 100 days meant that everyone in Rwanda had to have been involved. Rwandan society had been completely blown apart, and everything had changed. Ms. Mujawayo reminded the audience that the genocide had taken place 45 years after the Convention had entered into force. She ended her remarks by asking the Council what was being done to restore justice.

18. The Special Adviser on the Prevention of Genocide stressed how unfortunate it was that, 65 years after the adoption of the Genocide Convention, the international community still had to reaffirm the Convention's importance. He noted that the Holocaust had been a horrific, unique experience, but that it had only been an extreme version of what populations had repeatedly suffered before the twentieth century and would continue to suffer. Referring to current ethnic and religious tensions and the extreme forms of identity-based violence taking place in various regions of the world, he noted that there was a dangerous increase in the number of situations meriting the urgent attention of the international community.

19. The Special Adviser recalled that the Genocide Convention was the first human rights treaty of the United Nations, which spoke to its significance. In addition to setting out norms relating to the punishment of the crime of genocide, one of the most important contributions of the Convention was that it had also established the responsibility to prevent genocide. He emphasized that preventing genocide did not mean responding when the crime was already unfolding. If genocide was already under way, the international community had failed to meet its obligation and responsibility under the Convention to prevent it. He stressed that the responsibility to prevent genocide fell to all actors, including regional organizations, States, international organizations, civil society and individuals.

20. With regard to the role of the United Nations, the Special Adviser emphasized that "lessons learned" exercises after the failure to prevent or halt the genocides in Rwanda and Srebrenica had focused on improving the mechanisms for preventing genocide and other atrocity crimes. The inquiry reports into those two cases had generated a number of decisions at different levels. He recalled that the Secretary-General of the United Nations had presented his Action Plan to Prevent Genocide in 2004 and had appointed a Special Adviser on the Prevention of Genocide to act as an early warning mechanism.

21. Member States had made a landmark commitment at the 2005 World Summit, articulated in paragraphs 138 and 139 of the outcome document. In that document, all Heads of State and Government affirmed their responsibility, both individual and collective, to protect populations by preventing genocide, war crimes, ethnic cleansing and crimes against humanity, and incitement to such crimes. As each of the five annual reports of the Secretary-General on the responsibility to protect had underlined, preventive action lay at the core of the three pillars of the responsibility to protect.

22. The Special Adviser also highlighted various regional initiatives to develop preventive capacity, such as the establishment of the Regional Committee for the Prevention and Punishment of Genocide, War Crimes and Crimes against Humanity and all Forms of Discrimination, by the International Conference on the Great Lakes Region, and of the Latin American Network for the Prevention of Genocide and Mass Atrocities. He also referred to inter-agency arrangements, and to the nomination of focal points on the responsibility to protect or on the prevention of genocide. He referred to the Global Action Against Mass Atrocity Crimes meeting that had taken place in Costa Rica in March 2014, which had brought together 56 States that had appointed the focal points. He further highlighted national prevention initiatives launched by members of various regional networks.

23. The Special Adviser acknowledged the important role played by the Human Rights Council in advancing prevention, including the Council's role in establishing commissions of inquiry and in addressing specific situations of concern. He stressed that the Council was an important body in the area of genocide prevention, whose voice should be heard more frequently and more consistently. He recommended that the Council endeavour to anticipate the risk of atrocity crimes and that it engage at an early stage to pre-empt escalations of tensions into potentially genocidal violence. The Special Adviser invited the Human Rights Council to adopt the Framework of Analysis that his Office had developed for assessing the risk of atrocity crimes.

24. The Special Adviser noted that genocide, war crimes and crimes against humanity were not single events that happened overnight. They were processes that involved different stages, and required planning and resources. The Framework of Analysis identified risk factors relevant to assessing the risk of genocide and other atrocity crimes. Identifying risks at an early stage provided opportunities to develop effective prevention strategies, well before situations escalated to the point where they became more costly and more difficult to control. The Special Adviser also encouraged the Human Rights Council to discuss how to better monitor the implementation of the Genocide Convention as, in contrast to other human rights treaties, the Convention did not provide for a dedicated body to monitor its implementation. He believed that the absence of a monitoring mechanism may encourage some States to ignore their obligations under the Convention, including the responsibility to prevent.

25. In his conclusion, the Special Adviser highlighted the importance of dedication and political will in fighting for a world where people were no longer targeted because of the colour of their skin, their ethnic background, their religious faith, or any other form of identity. The international community should strive to prevent future atrocity crimes.

26. In his intervention, Jonathan Sisson, of the Swiss Federal Department of Foreign Affairs, shared some reflections on the mechanisms of prevention and accountability for atrocity crimes. He noted that the adoption of the Genocide Convention in 1948 had marked a historical milestone on the path towards prevention and accountability. Nevertheless, he emphasized that, while the Convention provided an important framework for accountability after the commission of genocide, experience had shown that national and international courts found it exceedingly difficult in practice to convict the suspected authors of genocide. Furthermore, practitioners and policymakers had accumulated considerable

knowledge and experience in the field of genocide prevention since 1948, however that knowledge had not yet been followed by timely political decisions to prevent genocide.

27. Mr. Sisson referred to the 2013 report of the Secretary-General on the responsibility to protect, which had elaborated the emerging notion of "atrocity crimes" in relation to genocide, crimes against humanity, war crimes and ethnic cleansing. He stressed that an inclusive approach to prevention and punishment was both useful and necessary; it would create the basis for the development of a holistic prevention strategy. He noted that such a strategy would become operational much earlier in the conflict cycle than had been the case so far, as until now the focus had been on the later stage of genocidal intent. It would generate synergies among the different communities engaged in the responsibility to protect, the prevention of genocide, the protection of civilians, and transitional justice, beyond their respective lines of action, and would unite them in a joint endeavour.

28. Having highlighted the importance of a rapid response to stop the continuing cycle of mass atrocity, Mr. Sisson discussed several elements that such a response should entail. First, no society was immune from the threat of atrocities. Atrocity crimes could happen anywhere and at any time. Prevention was thus a central task for any sovereign and responsible State. Second, prevention was a permanent endeavour. History had taught us that prevention failed when violence and displacement took place on a large scale. Therefore, operational plans for prevention needed to be in place long before that happened. Prevention of atrocities should be understood in a way similar to prevention of threats to public health. Prevention required a permanent framework, so that when a threat was detected, the whole system was ready to act in a proactive way. Third, prevention was a cross-cutting issue. The root causes of atrocity crimes were manifold. Preventive measures needed to be part of the national agenda and linked in a consistent and effective way with long-term endeavours in the fields of peace, security and development. At times of mounting tensions, responsive and decisive mechanisms should be in place at the national level, supported by regional or international actors when needed. Fourth, dealing with the past was a prerequisite for prevention. Initiatives for prevention were especially challenging in post-conflict or post-authoritarian contexts, in which there was a legacy of human rights violations and abuses. In such cases, the updated set of principles for the protection and promotion of human rights through action to combat impunity provided a useful framework for addressing past abuses and providing redress, by combining initiatives in the area of truth-seeking, criminal accountability, victim compensation and institutional reform. Concerted efforts to deal with the past could serve to address fundamental grievances and rebuild trust in public institutions. Without such efforts, prevention policies would lack credibility.

29. In his conclusion, Mr. Sisson mentioned two positive recent developments. First, he highlighted the initiative undertaken by the Secretary-General to develop the six-point Rights up Front Action Plan. That response mechanism placed prevention and protection at the heart of United Nations strategies and operational activities. As such, it represented a serious effort on the part of the United Nations system to learn from its past failings; it placed a new emphasis on field-led activities and a coordinated approach from headquarters to prevent, or to end, large-scale violations of international human rights law and international humanitarian law. Mr. Sisson emphasized that that effort needed the support of Member States and civil society. Second, as had also been mentioned by the Special Advisor, Mr. Sisson drew attention to the first international meeting of the Global Action Against Mass Atrocity Crimes initiative, on the topic of prevention and protection, that had taken place in Costa Rica early in March 2014. That event had been organized at the initiative of Argentina, Costa Rica, Denmark, Switzerland and the United Republic of Tanzania, in cooperation with the Office on Genocide Prevention and the Responsibility to Protect, and had been attended by representatives of 56 Member States of the United Nations. The participants had elaborated suggestions and recommendations for the

development of national policies and architectures to prevent atrocities. In particular, they had discussed the importance of creating a platform of exchange and support for States committed to, or willing to commit themselves to, the prevention of atrocity crimes. What united the participants in that effort was the conviction that the States themselves had the primary responsibility for preventing atrocity crimes within their own territorial borders. This was a strong signal of national ownership and political will, formulated in a spirit of complementarity with ongoing global initiatives at the international level.

IV. Summary of the interactive discussion

30. Representatives of the following delegations spoke during the interactive discussion: Algeria, Argentina, Australia, Azerbaijan, Belgium, Brazil, Chile, Costa Rica (on behalf of the Community of Latin American and Caribbean States), Cuba (on behalf of the like-minded group), Egypt, Estonia, Ethiopia (on behalf of the African Group), the European Union, Hungary, Liechtenstein, Madagascar, Montenegro, Morocco, the Netherlands, New Zealand, Poland, Portugal, Rwanda, Sierra Leone, Slovenia, Spain, Sudan, Turkey, the United States of America and the Bolivarian Republic of Venezuela. Owing to a lack of time, the statements of the delegations of Cyprus, Ecuador, Ireland and Italy were not delivered.

31. Delegates of the following non-government organizations also spoke: the European Union of Public Relations, the Indian Council of South America, the International Association of Jewish Lawyers and Jurists and the World Environment and Resources Council.

A. National initiatives

32. During the interactive discussion, several delegates noted that States had the primary responsibility to protect their population from genocide and other atrocity crimes, and needed to take the necessary measures to sanction any human rights-related violations. It was also noted that the sixty-fifth anniversary of the Genocide Convention had given all States the opportunity to reflect on ways and means to avoid the recurrence of genocide. Several delegates considered that the most effective way of avoiding future cases of genocide was to prevent war and conflicts by tackling root causes at the national level. One of the key goals of the prevention of genocide agenda should be to acquire a full knowledge of the causes of genocide, of early warnings, and of the consequences of genocide. In that regard, several delegates highlighted the importance of promoting tolerance and respect for all groups, be they racial, religious, ethnic or any other kinds of groups. They recommended that cultural and religious tensions, which were often the root causes of conflicts, be adequately and carefully dealt with, in order to prevent their potential to flare up into conflicts and wars.

33. Several delegates emphasized that building protection capacities in countries at risk, before crises and conflicts broke out, could contribute to prevention efforts. In that regard, they mentioned the efforts made by some countries to generate opportunities for dialogue and exchanging best practices. For instance, prevention of genocide was part of the national policy of the Netherlands for protecting civilians in line with the principles of the responsibility to protect (R2P). The Government of the Netherlands had appointed a focal point on R2P and was working on putting that principle into practice. Similarly, Australia had had a national focal point for R2P since 2011 and had recently joined the Global Action Against Mass Atrocity Crimes initiative. It was recommended that all States consider appointing national focal points to coordinate and lead relevant activities. Furthermore, they should work collectively to prevent atrocity crimes such as genocide.

34. The United States had taken a number of steps to strengthen its capacity to prevent atrocities, which had included creating an internal mechanism to coordinate atrocity prevention efforts across government departments, thereby enhancing the collection and analysis of relevant intelligence, and expanding its multilateral and bilateral diplomatic efforts to identify warning signs and coordinate its response. The United States was also working to strengthen training and educational tools for diplomats and development experts, in order to better equip them to identify and respond to situations quickly and effectively. The recommendations of the country's Genocide Prevention Task Force were referred to as an excellent tool for the prevention of genocide.

35. The Government of Hungary had initiated the establishment of the Budapest Centre for the International Prevention of Genocide and Mass Atrocities in 2010. The activities of the Centre were focused on promoting effectively the culture of conflict prevention and on institutionalizing the prevention aspects of the Genocide Convention. The Centre concentrated on bridging the gap between early warning and early action, setting up and applying an integrated warning-response support system, generating political consensus for timely action, and assisting in developing the capacity of the international community to prevent mass atrocities. The initiatives launched by the Centre included a report on the capacities of the European Union at preventing mass atrocities, published in 2013; a multi-annual project to develop the skills of national administrations to prevent genocide and to operationalize the R2P; and various efforts to support the implementation of the mandates of the Special Adviser on the Prevention of Genocide and the Special Adviser on the Responsibility to Protect.

36. Several delegates encouraged States to build their capacity to prevent and respond to genocide, war crimes and crimes against humanity through the development of national expertise. They emphasized the importance of promoting truth, justice, reparation, and guarantees of non-recurrence of genocide. Economic development and restorative justice were also needed in order to prevent genocide. In addition, delegates highlighted the important role of civil society at the national level.

37. It was noted that, after the traumatic experience of atrocities committed by the military dictatorship between 1973 and 1989, Chile was strongly committed to the prevention of genocide and mass atrocities. The country had committed itself to guaranteeing that no such atrocities would be perpetrated in the future. Such guarantees of non-repetition were an essential part of a comprehensive reparation policy for past human rights violations.

38. National initiatives had also included the organization of several events. For instance, in June 2013, Italy had held an event dedicated to genocide prevention and the responsibility to protect, which had also focused on United Nations early warning mechanisms. In March 2014, Belgium had held an international conference on the prevention of genocide. At both events, participants had discussed various strategies and efforts relating to the implementation of the Genocide Convention.

39. Several delegates highlighted the importance of combating impunity, and of promoting democracy, the rule of law and good governance at the national level. For instance, it was stressed that the establishment of the Gacaca courts in Rwanda had contributed to delivering justice for Rwandans; more importantly, the courts had facilitated reconciliation in the country. Delegates also emphasized the importance of adopting the necessary legislation in order to ensure the implementation of the Genocide Convention at the national level. For instance, after its ratification of the Genocide Convention in 1982, Cyprus had adopted a specific law providing that "whoever commits any of the acts of genocide described in article II of the Convention or any of the acts listed in article III of the Convention is guilty of felony and, upon conviction, may be subject to the penalty of life imprisonment".

B. Regional initiatives

40. Several delegates highlighted the importance of regional initiatives for the prevention of genocide. In the immediate aftermath of the genocide in Rwanda, the African Union had enshrined a number of objectives and principles in its Constitutive Act to prevent the recurrence of genocide on the continent. These included the promotion of peace, security and stability; the promotion and protection of human and peoples' rights; respect for democratic principles, human rights, the rule of law and good governance; and the condemnation and rejection of impunity. The Ezulwini Consensus, of 2005, had further elaborated some of those objectives and principles. Moreover, in article 4 (h) of the Constitutive Act, African Union member States had endorsed the right of the Union to intervene in a member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.

41. On the basis of the aforementioned principles, the African Union and subregional organizations had made significant progress towards developing mechanisms for the prevention of genocide. The African Peace and Security Architecture had been established to respond, in a timely and decisive manner, to situations of conflict on the continent, particularly those that could potentially lead to genocide. More significantly, the Architecture aimed to foster better understanding of ways to develop preventive action. Mechanisms such as the Peace and Security Council, the African Union's early warning mechanisms, the African Standby Force and various African Union mediation efforts had enabled the continent to better respond to situations of conflict. In addition, through impartial and non-political judicial mechanisms, the African Union had adopted a firm position against impunity and in support of the need for accountability for heinous crimes.

42. At the subregional level, the Economic Community of West African States, the Southern African Development Community, the East African Community, the International Conference of the Great Lakes Region and the Intergovernmental Authority on Development had all established instruments and mechanisms aimed at preventing and resolving conflicts, in particular those conflicts that could lead to genocide.

43. The European Union was working actively, at both the EU level and the international level, to prevent violent conflicts. It used various means, including the promotion and protection of human rights, and close collaboration with civil society. The European Union itself was a successful example of how regional organizations contributed to the prevention of mass atrocity crimes. It had developed instruments to address the root causes of conflict. It had also put into place an early warning system to identify risks of future conflict and to ensure a timely response. Several measures had contributed to translating R2P into practice, including (a) recommendations of the European Parliament to the European Council on the United Nations principle of the responsibility to protect, adopted in April 2013; (b) the enlargement of the European R2P focal point network; (c) the report on the capabilities of the European Union to prevent mass atrocities; and (d) the targeted training of national administrations sponsored by the Budapest Centre for the International Prevention of Genocide and Mass Atrocities.

44. The Latin American Network for the Prevention of Genocide and Mass Atrocities had been established in March 2012. The goal of the Network was to prevent future atrocities via the training of public officials. It acted as a regional forum, bringing together countries in the region to exchange good practice, information, development policies and preventive tools. The Network had been working in collaboration with the Auschwitz Institute for Peace and Reconciliation, and with the Office of the Special Adviser on the Prevention of Genocide within the United Nations. It was currently working on the development and implementation of a curriculum for the prevention of genocide.

C. International initiatives

45. Several delegates emphasized that while the primary responsibility for the protection of its population lay with the State, the international community had a collective responsibility to respond if a crisis materialized. They considered that the international community should focus on providing comprehensive assistance to States to strengthen their capacity to protect their populations from crimes of genocide, and on preventive diplomacy.

46. In that context, some States considered that international cooperation should focus on the promotion and protection of human rights as a means to develop social resilience against massive human rights violations. Such cooperation should include: (a) initiatives to prevent hate speech and practices that incited racism, religious discrimination and xenophobia; (b) the empowerment of women, and promotion of the education of girls and women; (c) strengthening educational programmes on human rights, and the diffusion of a culture of peace; (d) the development of local political participation mechanisms by peaceful means; (e) the prevention of, and sanctions for, the practice of torture and other cruel, inhuman or degrading treatment; and (f) the provision of material and symbolic reparation to victims of grave human rights violations that had been perpetrated, encouraged or tolerated by the State. Several delegates stressed that those actions would contribute to discouraging the escalating dehumanization and the increasing deprivation of rights that preceded crimes against humanity and genocide.

47. Mass atrocities, including genocide, were extreme forms of human rights violations. The protection of human rights, therefore, was an important prerequisite to preventing genocide and mass atrocities. In that context, several delegates welcomed the Rights up Front Action Plan, as it would help to translate into practice the foundational belief underlying the prevention efforts of the United Nations: a better interconnection between peace and security, human rights and development. They also noted that this new initiative would create substantial synergies and would add value to preventive efforts.

48. It was also noted that it was not the lack of mechanisms but rather the lack of international political will that was problematic, because countries tended to focus on self-interest when they tackled crises. In that regard, some delegates stated that it was necessary to avoid double standards and selective approaches when dealing with different conflicts in the world, including situations of foreign occupation. They emphasized that wars, foreign interventions and unilateral coercive measures were not the best means of preventing genocide.

49. With regard to the emergence of new anti-Semitic forces in Europe, it was noted that verbal and physical violence against Jews, Roma and immigrants had been occurring in many parts of the continent. The swastika — the Nazi symbol — was still being used frequently around the world. States, and the Human Rights Council, were urged to declare that there would be no tolerance for genocidal acts or statements. States were also urged to include, in their reports for the universal periodic review, information on measures taken to combat genocide and other acts going against the spirit of the Genocide Convention.

50. With regard to the role of the Security Council, it was noted that the Council must exercise its responsibility to protect populations from atrocity crimes. This required a serious change in the way in which permanent members used their veto. States should not prevent the United Nations from taking meaningful action to protect civilian populations. It was emphasized that there must be an urgent review of United Nations mechanisms, particularly those of the Security Council. In that context, one delegate spoke of the advocacy initiative of France to implement a code of conduct that would prevent the use of the veto in serious situations.

51. Many delegates recognized the valuable work of the Office on Genocide Prevention and the Responsibility to Protect. In particular, they noted the role of the Office in reinforcing United Nations early warning mechanisms and the national prevention capacity. They stressed that the Analysis Framework developed by the Office was an invaluable tool. All States should not only use the Analysis Framework, but should cooperate to improve the Framework so as to establish, with the utmost clarity, indicators suggesting high risk factors. The Analysis Framework was a tool allowing for the evaluation of risks, which included eight indicators.[2]

D. Disseminating knowledge and raising awareness

52. Several delegates noted that a central element of genocide prevention was to acquire full knowledge of the causes of genocide, of early signs, and of the consequences of genocide. In that vein, education and the promotion of tolerance and respect for all populations and groups — be they national, ethnic, racial, religious, or other groups — was essential. Delegates also highlighted the importance of disseminating information about the Convention. They noted that raising awareness was crucial, because the international community should not forget that genocides were still taking place, and there were still risks of new genocides. Initiatives for raising awareness should include engaging stakeholders in interdisciplinary dialogues and educational campaigns.

53. Delegates also emphasized that fostering a culture of peace strengthened the rejection of violence in society. It encouraged the denunciation of abuses and provided early warning against massive human rights violations. The speakers also referred to the introduction and enactment, by a number of States, of legislation to address genocide denial. In that regard, it was emphasized that practical measures could be taken at the international level to meaningfully address genocide denial. Survivors could play an important role in preserving memories and truth, which would contribute to countering genocide denial.

E. Combating impunity, and the role of the International Criminal Court

54. Several delegates stated that the prosecution of genocide, war crimes and crimes against humanity was, first and foremost, a national responsibility. However, national investigations and prosecutions often failed when there was an urgent need for justice to prevail.

55. If States were unwilling or unable to prosecute those crimes, the International Criminal Court should play a role. In that context, the Netherlands had taken the initiative, together with Argentina, Belgium and Slovenia, to establish a multilateral treaty on mutual legal assistance and extradition for atrocity crimes, including genocide.

56. Several delegates emphasized that having an International Criminal Court that had universal jurisdiction would ensure its effectiveness, which was in the interest of all humankind. The Friends of the International Criminal Court were making efforts to support the Court in implementing its mandate in the most efficient manner. It was important to recall that the steps taken by the Court were not directed against any particular nations or States, but against the alleged perpetrators who were responsible for atrocity crimes. Some

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[2] The full text of the Analysis Framework is available at: http://www.un.org/en/preventgenocide/adviser/pdf/osapg_analysis_framework.pdf.

delegates also highlighted the role that regional judicial mechanisms could play in combating impunity for such crimes.

V. Concluding remarks

57. **In addressing the issue of the prevention of genocide, particularly in connection with early warning signs, the panellists highlighted the importance of using existing mechanisms, establishing a national architecture with focal points for atrocity crimes, and strengthening national capacity. The aim should be a collective and global effort to prevent genocide and other atrocity crimes. In addition, the panellists urged States to involve civil society when addressing the prevention of atrocity crimes and the protection of populations from such heinous crimes.**

58. **The panellists stressed the importance of supporting national institutions in ensuring that human rights and the rule of law were respected without discrimination. It was important to establish credible and trustworthy institutions, to eliminate corruption and to foster a climate that allowed individuals to fully enjoy all human rights: civil, political, economic, social and cultural.**

59. **The panellists also highlighted the importance of searching for missing persons and victims of genocide and other atrocity crimes. They recommended that States should take measures to help victims and survivors so that they could begin a new life. They urged States to promote cohesion and reconciliation, while preserving memories and truth. Memorials should focus on healing the society and helping everyone to move on.**

60. **The panellists recommended that the Human Rights Council continue to discuss ways to ensure the prevention of genocide. The Council should strengthen the preventive aspects of its works. It must not wait for situations to worsen before discussing the issue of prevention. The Council should consider using the Analysis Framework on the prevention of genocide, developed by the Office on Genocide Prevention and the Responsibility to Protect, in its prevention works and in conducting appropriate assessments of critical situations. The panellists also highlighted the importance of commissions of inquiry established by the Council.**

61. **The panellists recommended States and other stakeholders to pay attention to strengthening accountability, both at the national and the international levels, which was important in the fight against impunity and in the prevention of atrocity crimes. To further those goals, they emphasized the need to ensure universal ratification of the Rome Statute of the International Criminal Court.**